FALLER

PATENT OFFICE FEES

HEARING

BEFORE THE

SUBCOMMITTEE ON

PATENTS, TRADEMARKS, AND COPYRIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

PURSUANT TO S. RES. 267

ON

S. 2225

SEPTEMBER 4, 1962

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PATENT OFFICE FEES

TUESDAY, SEPTEMBER 4, 1962

U.S. SENATE,
SUBCOMMITTEE ON PATENTS,
TRADEMARKS, AND COPYRIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 12:05 p.m., in room 2228, New Senate Office Building, Senator John L. McClellan (chairman) presiding.

Present: Senator McClellan.

Also present: Clarence M. Dinkins, chief counsel; Thomas C. Brennan, assistant counsel; Stephen G. Haaser, chief clerk, Subcommittee on Patents, Trademarks, and Copyrights; George S. Green, professional staff member; and Andrejs Plakans, representing Senator Scott, of Pennsylvania.

Senator MCCLELLAN. The Subcommittee on Patents, Trademarks, and Copyrights is meeting this morning to conduct a public hearing on three bills. The first bill to be considered is S. 2639 which would amend title 35 of the United States Code to eliminate the requirement for an oath by an applicant for a patent and verification by the applicant of an application for trademark registration. I call the attention of those who will testify on this bill to the fact that the Department of Commerce has proposed certain amendments to S. 2639 and has requested this subcommittee to consider them. These amendments have been incorporated in H.R. 12773, which was introduced by Congressman Donohue on August 6, 1962.

The second bill that shall be considered at the hearing this morning is H.R. 12513, which was passed by the other body on August 6, 1962, and which provides for public notice of settlements in patent interferences. Pending the examination of this bill, the subcommittee earlier this year withheld its approval from that portion of the drug bill, S. 1552, which would have required that every contract, agreement, or understanding entered into by any applicant for a drug patent with any other person, granting any rights with respect to the patent application, or for the purposes of having a patent granted, be in writing and filed with the Commissioner of Patents.

The third bill to be considered by the subcommittee today is S. 2225, which fixes the fees payable to the Patent Office. I would again direct the attention of the witnesses to certain revisions in this bill which have been proposed by the Department of Commerce and tendered to this subcommittee for consideration. These amendments have been incorporated in H.R. 10966 which was introduced by Congressman Celler on March 28, 1962. S. 2225 was introduced by me

at the request of the Department of Commerce. It is significant to note that the income of the Patent Office has fallen from 90 percent recovery of costs following the last increase in fees in 1932, down to about one third recovery of expenses during the past fiscal year. If the Congress were to approve the fees proposed by the Patent Office, when these fees became fully effective, it is estimated that the Patent Office would be recovering approximately 75 percent of its expenses.

A fundamental question to be examined by the subcommittee in connection with the Patent Office fee bill is to what extent should special beneficiaries of Government programs bear the costs of operations attributable to these special services. The Congress has had occasion to express itself on this subject previously. Title 5 of the Independent Offices Appropriation Act of 1952 established an objective that services rendered to special beneficiaries by Federal agencies should be self-sustaining to the fullest extent possible. In considering Patent Office fees, the subcommittee will be particularly interested in determining whether any reasons exist as to why the expenses of the Patent Office should not be principally borne by those who make direct use of its services. Another question to be considered by the subcommittee in connection with this bill is the extent to which applicants may be encouraged to submit short disclosures by imposing greater fees for complex applicants. The pending bill would make a major innovation in our patent system by instituting a system of maintenance fees. The subcommittee is particularly interested in determining what impact this provision may have on the research incentive and the functioning of the patent system.

(After hearing testimony on S. 2639 and H.R. 12513 the subcommittee turned to consideration of S. 2225, a bill to fix fees payable to the Patent Office.)

Mr. McClellan. Mr. Ladd, you have quite a lengthy statement on S. 2225, I believe. Will you agree with me that it may be inserted in the record and not read?

STATEMENT OF DAVID L. LADD, COMMISSIONER OF PATENTS; ACCOMPANIED BY JAMES GAMBRELL, SPECIAL ASSISTANT TO THE COMMISSIONER; P. J. FEDERICO, EXAMINER IN CHIEF; DANIEL DE SIMONE, LEGISLATIVE CONSULTANT; CHARLES GAREAU, PATENT SPECIALIST; DONALD ELLIS, DIRECTOR, BUDGET AND FINANCE DIVISION; KENNETH McCLURE, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF COMMERCE

Mr. Ladd. Mr. Chairman, we felt if I tried to read that, this committee would have a backlog as large as the Patent Office.

Senator McClellan. Let us file this statement, then, for the record, or as an appendix to the record.

All right, it will go in the record. And I will let counsel insert a preliminary statement in the record at this point.

(The statement of Mr. Ladd appears on p. 39.)

Mr. Dinkins. Mr. Chairman, I would like to offer for the record a notice which appeared in the Congressional Record on August 22, 1962, the text of S. 2225, and a letter from the Department of Commerce to the President of the Senate which suggested amendments to

the bill. Also letters from the Secretary of Commerce and the Director of the Bureau of the Budget, approving S. 2225, with suggested amendments.

Senator McCLELLAN. Very well.

(The material referred to follows:)

NOTICE OF PUBLIC HEARINGS ON S. 225, S. 2639, AND H.R. 12513

Mr. McCLELLAN. Mr. President, as chairman of the Standing Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, I wish to announce that the subcommittee has scheduled public hearings on S. 2225, a bill to fix the fees payable to the Patent Office; S. 2639, to amend the United States Code relating to the oath of applicant for patent and to certification by applicant of application for trademark registration; and H.R. 12513, to provide for public notice of settlements in patent interferences, and for other purposes.

The hearings will commence on Tuesday, September 4, 1962, at 10 a.m., in room 2228, New Senate Office Building.

Anyone wishing to testify or file a statement for the record should communicate immediately with the office of the Senate Patents, Trademarks, and Copyrights Subcommittee, room 349A, Senate Office Building, Washington 25, D.C., telephone CA 4-3121, or Government Code 180, extension 2268.

The subcommittee consists of the Senator from South Carolina [Mr. JOHNSTON], the Senator from Michigan [Mr. HART], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Wisconsin [Mr. WILEY], the Senator from Pennsylvania [Mr. SCOTT], and myself, as chairman.

[S. 2225, 87th Cong., 1st sess.]

A BILL To fix the fees payable to the Patent Office, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That items numbered 1, 2, 3, 4, 6, 8, and 9, respectively, in subsection (a) of section 41 of title 35, United States Code, are amended to read as follows:

"1. On filing each application for an original patent, except in design cases, $40; and $2 for each claim in excess of ten.

"2. On issuing each original patent, except in design cases, $50, and $2 for each claim in excess of ten.

"3. In design cases: For three years and six months, $20; for seven years, $30; for fourteen years, $40.

"4. On every application for the reissue of a patent, $40, and $2 for each claim in excess of ten which is also over and above the number of claims of the original patent.

"6. On an appeal for the first time from the examiner to the Board of Appeals, $50.

"8. For certificate of correction of applicant's mistake under section 255 or certificate under section 256 of this title, $15.

"9. As available and if in print: For uncertified printed copies of specifications and drawings of patents (except design patents), 25 cents per copy; for design patents, 10 cents per copy; the Commissioner may establish a charge not to exceed $1 per copy for patents in excess of twenty-five pages of drawings and specification and for plant patents printed in color; special rate for libraries specified in section 13 of this title, $50 for patents issued in one year."

SEC. 2. Section 41 of title 35, United States Code, is amended by adding the following subsection:

"(c) The fees prescribed by or under this section apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof."

SEC. 3. Section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427, U.S.C., title 15, sec. (1113), as amended, is amended to read as follows:

"(a) The following fees shall be paid to the Patent Office under this Act:

"1. On filing each original application for registration of a mark in each class, $35.

"2. On filing each application for renewal in each class, $25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of $5.

"3. On filing an affidavit under section 8(a) or section 8(b), $10.

"4. On filing each petition for the revival of an abandoned application, $10.

"5. On filing notice of opposition or application for cancellation, $25.

"6. On appeal from an examiner in charge of the registration of marks to the Trademark Trial and Appeal Board, $25.

"7. For issuance of a new certificate of registration, following change of ownership of a mark or correction of a registrant's mistake, $15.

"8. For certificate of correction of registrant's mistake or amendment after registration, $15.

"9. For certifying in any case, $1.

"10. For filing each disclaimer after registration, $15.

"11. For printed copy of registered mark, 10 cents.

"12. For recording every assignment or other paper not exceeding six pages, $3; for each additional two pages or less, $1; for each additional registration or application included, or involved in one writing where more than one is so included or involved, additional, $1.

"13. On filing notice of claim of benefits of this Act for a mark to be published under section 12(c) hereof, $10.

"(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office, not specified above.

"(c) The Commissioner may refund any sum paid by mistake or in excess."

SEC. 4. Section 154 of title 35, United States Code, is amended by inserting the words "subject to the payment of maintenance fees," after the words "seventeen years,".

SEC. 5. Title 35, United States Code is amended by adding the following new section after section 154:

"§ 155. Maintenance fees

"(a) During the term of a patent (other than a design patent) a first maintenance fee shall be due prior to the end of the fifth year from the date of the patent, a second maintenance fee prior to the end of the ninth year from the date of the patent if the patent is then still in effect, and a third maintenance fee prior to the end of the thirteenth year from the date of the patent, if the patent is then still in effect; said fees may be paid within six months after the due date, namely the end of the fifth, ninth, or thirteenth years, respectively, or as otherwise provided in subsection (b) of this section, upon payment of the additional fee prescribed for delayed payment. On failure to pay a maintenance fee before the expiration of the time provided therefor the right conferred by the patent shall terminate at the end of the fifth, ninth, or thirteenth year, as the case may be, or as otherwise provided in subsection (c) of this section. Such termination or lapsing shall be without prejudice to rights existing under any other patent.

"In the case of a reissued patent, the times specified herein shall run from the date of the original patent.

"(b) Notice of the requirement for the payment of the maintenance fees shall be attached to or embodied in the patent. The Commissioner shall send a separate notice of the requirement for the fee, without unreasonable delay, after the due date has passed without the fee having been paid, to the patentee and any other party having an interest in the patent as shown by the records of the office on the due date, at the address shown by the record of the patent, and the fee, together with the additional fee prescribed for delayed payment, may be paid within thirty days from the date of such notice or within six months from the due date, whichever period expires later.

"(c) Any inventor to whom a patent was issued (or his heirs if the inventor is deceased) and who owns the patent may, at a time not earlier than six months prior to the due date and not later than the final date provided in subsection (b) of this section, request deferment of the first maintenance fee if the total sum received by anyone, since the date of the patent, from or under or by virtue of the patent, or from the manufacture, use or sale under the patent of the invention, was less than the amount of the fee due, and a statement under oath to this effect accompanies the request. The fee shall thereupon be deferred until the time the second maintenance fee is due and shall be payable within the same time as and in addition to such second maintenance fee and with the same result if not paid.

"Any inventor to whom a patent was issued (or his heirs if the inventor is deceased) and who owns the patent may, at a time not earlier than six months prior to the due date and not later than the final date provided in subsection (b) of this section, request deferment of the second maintenance fee, and further deferment of the first maintenance fee (if such fee has been deferred under the first paragraph of this subsection), if the total sum received by anyone, during the preceding four years, from or under or by virtue of the patent, or from the manufacture, use or sale under the patent of the invention, was less than the amount of the fee or fees due, and a statement under oath to this effect accompanies the request. The fee or fees due shall thereupon be deferred until the time the third maintenance fee is due and shall be payable within the same time as and in addition to such third maintenance fee and with the same result if not paid."

The analysis of chapter 14 of title 35, United States Code, immediately preceding section 151, is amended by adding thereto:

"155. Maintenance fees."

SEC. 6. Subsection (a) of section 41 of title 35, United States Code, is amended by adding the following:

"12. a. First maintenance fee, due on the expiration of the fifth year of the patent, other than a design patent, $100.

"b. Second maintenance fee, due to the expiration of the ninth year of the patent, other than a design patent, $300.

"c. Third maintenance fee, due on the expiration of the thirteenth year of the patent, other than a design patent, $500.

"d. On delayed payment of a maintenance fee, $25."

SEC. 7. (a) This Act shall take effect three months after its enactment.

(b) Item 1 of section 41(a) of title 35, as amended by section 1 of this Act, does not apply in further proceedings in applications filed prior to the effective date.

(c) The amendment of item 2 of section 41(a) of title 35 by section 1 of this Act does not apply in cases in which the notice of allowance of the application was sent prior to the effective date and in such cases the fee due is the fee specified by item 2 prior to its amendment.

(d) The amendment of item 3 of section 41(a) of title 35 by section 1 of this Act applies in the case of applications for design patents filed prior to the effective date for one of the lower terms and which are amended after the effective date to one of the higher terms.

(e) Item 4 of section 41(a) of title 35, as amended by section 1 of this Act, does not apply in further proceedings in applications for reissues filed prior to the effective date.

(f) Item 3, of section 31 of the Trademark Act as amended by section 3 of this Act, applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act on or after the effective date.

(g) Section 155 and item 12 of section 41(a), enacted by sections 5 and 6 of this Act, do not apply to patents issued prior to the effective date.

SEC. 8. Section 266 of title 35, United States Code is repealed.

The chapter analysis of chapter 27 of title 35, United States Code, is amended by striking out the following item:

"266. Issue of patents without fees to Government employees."

OFFICE OF THE SECRETARY OF COMMERCE,
Washington 25, D.C., March 22, 1962.

Hon. LYNDON B. JOHNSON,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: There are enclosed four copies of draft legislation that revises H.R. 7731. The earlier bill was designed to increase fees collected by the U.S. Patent Office of the Department of Commerce in the consideration and issuance of patents and registrations of trademarks and the performance of related activities. There are also enclosed copies of a section-by-section analysis and explanation of the revised legislation. The fees which would be modified by the revised proposal are presently established by statute and, therefore, con-

gressional action is necessary to effect changes. The new fees and statutory changes which are proposed also require congressional action.

As was noted in my letter of transmittal, dated June 13, 1961, accompanying H.R. 7731, the last major change in patent fees was in 1932 when the application and issuance fees were raised to $30 each. Immediately after the 1932 revision of fees the Patent Office was collecting in fees a sum exceeding 90 percent of the cost of operating the Patent Office. Although since that time the costs of operation of the Patent Office have risen considerably, no major adjustment of fees has been made to effect the same recovery of costs. In each of the 4 years, 1958–61, the Patent Office recovered in fees approximately one-third of its cost of operation. For fiscal year 1962 the estimated receipts on the basis of current fees would amount to approximately 32 percent of the proposed budget for that year. The fees presented in the proposed bill have been calculated so that if they were in full operation, the cost recovery would be approximately 75 percent. However, it should be noted that certain of the new fees proposed; namely, the maintenance fees payable after a patent has issued and the trademark affidavit fee payable after the registration has issued, would not be effective immediately to bring in receipts since they apply only to patents and trademark registrations issued after the effective date of the proposed legislation, if enacted.

The principal purpose in submitting this revised form of H.R. 7731 is to design the fee structure for patent and trademark activities so that not only are approximately 75 percent of operating costs recovered, but the fees charged for filing an application and for issuing a patent bear a more reasonable relation to the cost of examining a specific application and issuing a particular patent. In the past, patent fees have distinguished only incidentally, if at all, between short and clear disclosures, and long and obscure ones. This revised legislation proposes to encourage clarity, brevity, and improved form by fee differentials.

The Department urges early congressional action to enable the Government to effect greater recovery of costs from special beneficiaries of this Government program as well as to encourage better practice before the Patent Office by applicants. Such action would be in furtherance of the administration's policy of charging special beneficiaries of Government programs for the costs of operation attributable to special beneficiaries.

The Bureau of the Budget advises that the draft bill would be consistent with the administration's objectives.

Sincerely yours,

EDWARD GUDEMAN,
Acting Secretary of Commerce.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION OF LEGISLATION TO FIX THE FEES PAYABLE TO THE PATENT OFFICE, AND FOR OTHER PURPOSES

SECTION 1

Section 1 of this bill makes various changes in the existing fees payable to the Patent Office in patent cases.

The first change in this section is to raise the fee payable on applying for a patent from $30 to $40, with the further payment of a charge of $2, instead of $1, for each claim presented in excess of 10, rather than 20 (item 1 of sec. 1) and a new fee of $10 for each independent claim presented at any time in excess of 1. This application filing fee is the most important fee payable in the Patent Office and accounts for 32 percent of the receipts of the Patent Office. The different treatment accorded independent claims as compared to the total number of claims is to encourage applicants to use the dependent form of claim which, because it is easier to examine, will reduce examination time.

The second change in fees in this section is the raising of the fee payable for issue of a patent from $30 to $40, and the addition of a charge of $10 for each page of specification as printed and $2 for each sheet of drawing (item 2 of sec. 1). The issue fee, which is the second most important of the Patent Office fees and accounts for 19 percent of the receipts of the Patent Office, is also extended to cover reissue patents. This new type of issue fee is designed to improve the relationship between the size of a patent and the cost of examining and issuing it.

The fees payable in design patent cases are changed from $10, $15, and $30, for design patents of terms of 3½, 7, and 14 years, respectively, to a filing fee of $20, and issue fees of $10, $20, and $30 for terms of 3½, 7, and 14 years, respec-

tively (item 3 of sec. 1). The design patent fees account for less than 2 percent of Patent Office receipts and the increases here are of about the same order proportionately as the increases in the other patent application fees. The form of the fees has been changed to parallel the filing and issue fees for other types of patent applications.

The fee for filing for a reissue is changed to parallel the fee charged for original applications (item 4 of sec. 1).

The fee on appeal to the Board of Appeals is increased from $25 to $50 if the Board considers the appeal and an additional charge of $50 exacted for an oral hearing if required (item 6 of sec. 1). This appeal fee accounts for less than 4 percent of Patent Office receipts.

The fee for filing a disclaimer (item 5. of sec. 1) or for petitioning to revive an abandoned application or for the delayed payment of an issue fee is increased from $10 to $15 (item 7 of sec. 1).

The fee for recording each assignment of an application, patent, or legal paper is increased to $20, instead of $3, with $1 for each two pages over six and 50 cents for each additional item in one writing (item 10 of sec. 1).

A few adjustments in other fees are also made by this section.

Patent fees of a new type and a new concept of paying the issue fee are provided in sections 4, 6, and 8.

SECTION 2

Section 2 of the bill provides that Government departments and agencies shall pay the same fees as are paid in the Patent Office by others, except as otherwise provided.

SECTION 3

Section 3 of the bill makes various changes in fees payable in the Patent Office in trademark cases. This section is in the form of a complete rewriting of section 31 of the Trademark Act providing for fees. The items have been tabulated and numbered for convenience of reference and a few minor fees have been omitted from the act to be included in the group of fees fixed administratively by the Commissioner.

Three major changes in trademark fees are made. First, the fee on filing an application to register a mark is raised from $25 to $35 (item 1 of sec. 3). Second, a fee of $10 is made payable at the time that an affidavit to maintain the registration in force must be filed (item 3 of sec. 3). This fee is made applicable only in the case of registrations issued after the effective date of the legislation if enacted (sec. 9(d)). Third, the fee for recording an assignment of a trademark registration or any other paper is increased to $20 (item 12 of sec. 3).

A few adjustments in other fees have also been made. For the first time, a fee is made payable on the filing of a petition to revive an abandoned trademark application (item 4 of sec. 3). Also, the fee ($10) for the filing by a registrant of an application to cancel or surrender a registration issued to it has been dropped. The additional revenue which would be received in trademark cases under this revised schedule of fees would make the function of examining and issuing trademark registrations and related activities of the Patent Office, considered separately, substantially self-supporting.

SECTION 4

This section provides for a different concept of paying the issue fee (provided for in item 2 of section 1) and is designed, in part, to simplify the issue problems in the Patent Office, thereby permitting earlier dissemination of disclosures of applications found to contain inventive subject matter.

The issue fee is to be paid after the patent issues, but in some cases the Commissioner may require a deposit to be charged against the fee before the patent issues.

SECTIONS 5, 6, 7, AND 8

Sections 5–8 introduce a maintenance fee in patent cases. After a patent is issued, the patentee is required to pay a fee of $100 at the expiration of the fifth year, a second fee of $200 at the expiration of the ninth year, and a third fee of $300 at the expiration of the thirteenth year, from the date of the patent. These fees are required to maintain the patent in force, and failure to pay them results in a lapse of the patent rights. A period of grace of 6 months is provided, and a deferment provision allows an inventor who still owns the patent to defer payment if he has not made any money from the patent.

SECTION 9

By this section, the issue fee, as provided for in item 2 of section 1 of this act, is made applicable only to applications which have not had a notice of allowance mailed prior to the effective date of this act if enacted, and the maintenance fees, as provided for in sections 5 through 8 of this act, are made applicable only to patents issued after the effective date of this act.

SECTION 10

Section 10 repeals section 266 of title 35, United States Code, relating to fees in certain Government cases, in view of the provisions of section 2 of the bill.

THE SECRETARY OF COMMERCE,
Washington, D.C., August 17, 1962.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: As you know, some time ago the Department of Commerce recommended to Congress a bill to revise patent fees. Over the years, the fees authorized by statute have become very much out of date and there is a strong need for new legislation on this subject. I personally feel that in the interest of economy for the Federal Government, that is to collect fees which will cover a greater percentage of the operating costs of that Office, this is long past due.

Extensive hearings have now been concluded in the House under the chairmanship of Representative Willis of Louisiana. I understand the House committee unanimously reported a bill to revise the patent fees. Also, the Rules Committee has granted a rule and we anticipate the bill will be scheduled in due course for consideration by the House.

I understand there has been some reluctance to schedule consideration by the Senate committee unless and until it appeared that favorable action would be taken by the House. I can appreciate this and I am writing you at this time to request, in view of the progress which has been made in the House, early consideration by the Senate committee. As chairman of the subcommittee which would initially consider this bill, I should greatly appreciate your putting it on your subcommittee schedule for early consideration. As we move along toward the end of the present session of Congress, I recognize that scheduling of bills both for committee consideration and floor action becomes increasingly difficult. A great deal of time has been expended upon the presently proposed legislation, both by executive officials and by Members of Congress, and it would be most unfortunate if the proposed legislation would not finally be acted upon because of the crowded schedules occurring in the closing days of the session.

Accordingly, I am bringing this to your attention and shall greatly appreciate anything you can do to expedite consideration of the proposed legislation by your subcommittee.

Sincerely yours,

LUTHER H. HODGES,
Secretary of Commerce.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington D.C., August 31, 1962.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with the testimony of Patent Commissioner David L. Ladd, in support of S. 2225, as revised, a bill "To fix fees payable to the Patent Office, and for other purposes," I am pleased to present the following statement which was prepared for the consideration of the Congress. I am also pleased to note that the Committee of the Judiciary of the House of Representatives has reported favorably on the bill. This letter sets forth the general policy of the administration on the matter of charges for Government services rendered to identifiable recipients, as well as our views on the merits of the subject bill.

In the conduct of their various activities many Federal agencies are required to provide certain services, supply products, or authorize the use of public resources which convey special benefits to identifiable recipients above and beyond those which accrue to the public at large. In fairness to the taxpayer, who carries the major burden of support of Federal activities, the Government has adopted the policy that the recipient of these special benefits should pay a reasonable charge for the service or product received or for the resource used.

The Congress gave statutory expression to this basic principle in title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) which established as an objective that services rendered to special beneficiaries by Federal agencies should be self-sustaining to the fullest extent possible. It is our opinion that the patent system does provide such a special benefit to identifiable recipients, i.e., the inventors, applicants, and holders of patents, and that accordingly these beneficiaries should bear a fair share of the cost of the system's support. The monetary value of rights acquired through the patent system is often very large. A large subsidy to the system is not necessary to protect the public. In fact, the bill seeks only to restore the well-established principle that the patent system should be substantially self-supporting by providing for fees which are commensurate with current needs.

At present many problems bear heavily on the Patent Office. The complexity of applications and mounting search load have reduced the production of examiners and forced a persistent expansion of the size of the examining corps. In addition, salaries, printing, and other elements of continuing overhead cost are sharply increased. A major new effort is being initiated in research and development which will require increased support. In order to overcome severe problems created by personnel turnover and excessive backlogs, attention is also being focused on the need for additional space and the modernization of examining facilities.

Action by the Congress to modernize patent fees will contribute to the improvement of the patent system in at least three ways. First, the fee structure which would be introduced by enactment of S. 2225 will provide remedies to certain inefficient practices by reducing the number of unnecessary complicated claims and inactive patents. Second, the additional revenues generated by increased fees will at least partially offset the cost of providing desirable improvements in the range and level of Patent Office services. Finally, enactment of the bill will provide important evidence of the determination of the beneficiaries of the patent system to join with the Government in accomplishing whatever improvements may be necessary to preserve this country's traditional system of patent examination and award.

To summarize, it is our position that S. 2225, by updating the patent fee structure, provides for recovery of a fair share of the costs of the Patent Office through a fair and reasonable system of fees. Furthermore, the revisions to the fee structure incorporated in the bill provide valuable corrective measures which would further benefit the operation of the Patent Office and the patent system. Accordingly, we concur in the intent of the legislation and strongly recommend its enactment.

Sincerely yours,

DAVID E. BELL, *Director.*

(Subsequently the following was ordered printed in the record at this point, by the chairman:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., September 7, 1962.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights, Committee of the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In connection with the testimony of Commissioner of Patents David L. Ladd in support of S. 2225, as revised, a bill to fix fees payable to the Patent Office, and for other purposes, it has come to our attention that a statement of the position of the administration on the matter of fees paid by other Federal agencies would be helpful.

The subject bill provides that patent fees apply equally to all parties, including Federal agencies, except that the Patent Commissioner would be able to waive Federal fees for incidental or occasional requests. It is our view that this provision is fair, desirable, and in keeping with good budgetary practice.

It is a principle concern of the Bureau of the Budget that the costs of services that are provided by Federal agencies will be determined and collected in all cases where a special benefit accrues to an identifiable recipient. We are similarly concerned that services which are provided for Federal agencies as a result of their requests will be shown as actual costs of the operation of those agencies. It is our belief that the budget requests of the individual agencies, as presented to the Congress in the executive budget, should in fact present the complete picture of the fiscal plan of that agency.

Since one of the major efforts represented by S. 2225 is to provide the Patent Office with a sounder and more rational fiscal structure, it seems consistent that Federal agencies should pay for services rendered and the Patent Office should not be required to finance services provided to other Federal agencies. We strongly support the enactment of S. 2225, as revised.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

Senator McCLELLAN. Mr. Commissioner, would you identify your associates, please.

Mr. LADD. I will be pleased to, Mr. Chairman. On my left is Mr. James Gambrell, the special assistant to the Commissioner of Patents. On his left is P. J. Federico, Examiner in Chief of the Patent Office. On his left is Mr. Daniel De Simone. On his left, Mr. Charles Gareau. On my immediate right is Mr. Donald Ellis, the Director of the Budget and Finance Division of the Patent Office. And on his right Mr. Kenneth McClure, who is in the General Counsel's Office of the Department of Commerce.

Senator McCLELLAN. Thank you very much, Mr. Commissioner.

All right, you may proceed.

Mr. LADD. As you know, Mr. Chairman, the Department of Commerce has suggested revisions to S. 2225, and those revisions correspond to a bill, H.R. 10966, which has been introduced in the House, and reported out favorably and unanimously, and without amendment, by the House Committee on the Judiciary.

Senator McCLELLAN. It has not been passed by the House yet?

Mr. LADD. It has not, sir. It has been granted a rule, and awaits floor action.

Senator McCLELLAN. Do you anticipate it likely will be passed?

Mr. LADD. That is my expectation.

Senator McCLELLAN. Before the session ends?

Mr. LADD. Yes sir.

Senator McCLELLAN. Very well.

Mr. LADD. In my testimony, therefore, I will refer to the proposed revision as the bill, and will direct my attention to it.

The bill is another in a series which has been submitted over the years to increase the Patent Office's fees, and therefore the revenues in the Patent Office. A number of those have heretofore been reported out favorably by various committees, and one, I think, even passed one House of the Congress.

In any event, a short history of these bills is given in the report which emanated from the House Committee on the Judiciary, on H.R. 10966.

There has been no significant increase in the fees of the Patent Office since 1932. At about that time, the Patent Office recovered substantially all of its expenses by fees.

Since the early 1940's, the disparity between income and expenses has steadily widened, and today we recover only about 31 percent of our budget expenses.

This is shown rather clearly on figure 1. These figures are included as a part of the prepared statement. But I am going to ask Mr. Gareau to display enlargements of them for the review of the committee.

Senator McCLELLAN. Are these charts you are now referring to already in the prepared statement?

Mr. LADD. Yes, sir.

Senator McCLELLAN. Very well.

Mr. LADD. This growing disparity between the revenues of the Office and its expenditures has not escaped this committee. This fact was commented upon in the 1958 committee report, when the observation was made that we recover approximately only one-third of our expenses by fees. There has been a further decline since that time. And, as I say, it is now about 31 percent. So in sum, not only is there a disparity between our revenue and our expenses, but that disparity is steadily growing on an established long-range trend.

Senator McCLELLAN. What would you think is the fair ratio to be borne in the overall, let us say, of the operation of the Patent Office, by the public—because the public benefits from it, too—and by those who take advantage of the services.

Mr. LADD. Mr. Chairman, I think that question goes to one of the fundamental disputes which you will hear in the testimony on this legislation.

There are those who at one extreme say that the Patent Office is a public service, should be subsidized, and no consideration should be given at all to the amount of the recovery of its expenses by way of fees.

On the other hand there is the policy of the Bureau of the Budget, which has been set forth in memorandums, to the effect that where there is a service performed by a Government agency, in which there is first of all a general benefit to the public, and secondly, a special benefit to special users, as they are called, there should be some reasonable cost recovery to reflect this distribution.

This bill is premised upon a 75-percent recovery of our current budgeted expenditures. If you asked me to defend 75 percent as against 80, or as against 85, or as against 70, or 65, I think it would be impossible to do so. But a three-quarters recovery is deemed by the Bureau of the Budget, and by us, to be a reasonable allocation of the burdens on the Patent Office.

Senator McCLELLAN. In other words, for the Federal Government the public, to bear 25 percent of the cost involved of operating the Patent Office you feel would be equitable.

Mr. LADD. That is correct.

I might say, Senator, that in my discussions with people in the Bureau of the Budget and in our own department, there is not so much concern as to resolving this philosophical issue about what this percentage should be, as there is, at least to some extent, to closing this growing gap between our revenues and expenditures.

Senator McCLELLAN. When were these fees last fixed by law?

Mr. LADD. In 1932—the major fees from which the overwhelming proportion of our income comes.

Senator McCLELLAN. What has been the general cost of operating? How much has it increased during this period of time. Let's take the salaries of the employees, percentagewise.

Mr. LADD. Those data are given for the Patent Office in the statement.

Senator MCCLELLAN. Let's just take the Patent Office. What percentage has it increased? Let's take salaries.

Mr. LADD. Let me give an example. The average salary for Patent Office employees in 1940 was approximately $2,600 per annum. Today the average salary and benefits amounts to $8,100; that is, $7,500 for salary, and $600 for benefits. And that is an increase of about 210 percent.

Now, if we go to another major item of our budget, which is printing and reproduction—and about one-sixth of our total budget goes to the Government Printing Office to print the patents—we get this information:

Printing and reproduction costs now comprise, as I have said, about 15 percent of total operating costs. The largest element of printing costs, over 70 percent, involves specifications of patents. The rate per page for printing of patent specifications was $4.41 in 1940. Today it is $14.75, which is an increase of 235 percent since 1940.

To print the specifications and drawings and to publish the issuance in the Official Gazette, the average patent of today costs about $63. At 1940 prices, the cost would be about $19. The increase in cost amounts to $44, or about 230 percent. So those figures will give you a general idea.

Senator MCCLELLAN. Mr. Ladd, on the average, how much do we increase the fees by this bill? I mean you have taken the average of costs there. Now, for the same services, by what percentage are we increasing the fees over 1932 or 1940?

Mr. LADD. I could make this point very quickly by referring to figures 5 and 7.

On figure 5, on the left hand side, there is shown the basic fees which are paid under present law on a patent application. That $60 represents a $30 filing fee, and a $30 final fee. There are other fees which are involved, but they are comparatively negligible.

On the right-hand side is shown an adjustment for what is commonly called the decreased purchasing power of the dollar.

I now want to lay aside maintenance fees for the moment. For an average patent, under the new law, the cost would be $144 in Patent Office fees; $131 of that is represented by what would ordinarily be called a cost of living adjustment. The $13 would represent a real increase. But the $131 would represent simply a cost of living adjustment.

Now, by looking at figure 7, you can see the comparison in millions of dollars of the amounts which are covered under the present law, and which would be covered under the legislation.

The recovery from filing fees is today about 2½ million. Under the legislation, over $5 million would be recovered.

You can see similar comparisons there for patent issues, designs, trademarks, ex parte appeals, and recording assignments. And on the right-hand side, you see an entirely new fee which is proposed by this legislation, which would be the maintenance fees.

Senator MCCLELLAN. A maintenance fee—that is a new thing. That is something new altogether.

Never have charged it before.

Mr. LADD. The U.S. Patent Office has never charged it before.

Senator McCLELLAN. Explain what you mean by a maintenance fee. On what did you base or predicate it?

Mr. LADD. It is a fee which is required to be paid periodically as a condition of maintaining the patent in force.

Senator McCLELLAN. You mean you give a patent for 17 years, is it——

Mr. LADD. That is correct.

Senator McCLELLAN. You say at the end of 5 years you have to pay another fee?

Mr. LADD. $100, under the bill.

Senator McCLELLAN. In what period?

Mr. LADD. At the end of 5 years.

Senator McCLELLAN. I just took that out of the air. Is that right?

Mr. LADD. That is correct. I think the fact that you took it out of the air, Senator, shows that the time period is not unreasonable.

Senator McCLELLAN. I just thought that is what you meant—in order to keep the patent alive, to maintain it.

Mr. LADD. That is correct.

Senator McCLELLAN. Although it is granted for 17 years, but to keep it alive if it proves profitable, and the fellow wants to keep it, he contributes something to the maintenance of the Patent Office, so to speak.

Mr. LADD. That is correct.

Senator McCLELLAN. That would be, then—he would have to pay three times, over the 17 years—$300.

Mr. LADD. Under the bill he would pay at the end of the 5th year $100, at the end of the 9th year, $200, and at the end of the 14th year, $300.

Senator McCLELLAN. It is a graduated scale.

Mr. LADD. That is correct.

Senator McCLELLAN. It goes up.

Mr. LADD. The idea is to try to place, first of all, part of the cost of maintaining and administering the patent system on those who benefit from it. And secondly, to make those payments at a time when the person can determine whether his patent has been actually of commercial value to him.

Senator McCLELLAN. Now, may I ask you this. Suppose he fails to pay. Then what happens?

Mr. LADD. The patent lapses.

Senator McCLELLAN. The patent lapses.

Mr. LADD. There is, however, a 6-month grace period. But once that grace period is passed, the patent lapses.

Senator McCLELLAN. There might very well develop something—a fellow might invent something, and not get it well marketed in 5 years. Is that right?

Mr. LADD. This is an objection which has been made. But actually there are some data which are available on this.

There have been studies made about when the patents which are ever used at any time during the life of the patent come into commercial use. And as a matter of fact, my predecessor, Commissioner

Watson, in testifying before the House committee on this, said, and I quote:

Recent but as yet unpublished studies by the George Washington Patent, Trademark, and Copyright Foundation have indicated, for instance, that of those inventions which are both exploited and patented by corporations, 40 percent are commercially exploited even before the application is filed, 50 percent are commercially exploited for the first time during the pendency of the application.

Senator McCLELLAN. Well, I guess we could talk about this for a long, long time. Generally you feel that the fees proposed here are reasonable, and they will bring up the income of the Patent Office to around 75 percent of the outgo, the cost of operating it.

Let me ask you this: Have you had serious complaints from any sources against these increases?

Mr. LADD. To understate, we have had very serious complaints. And you will hear a number of them here today.

Senator McCLELLAN. Some of the folks here don't want to pay any increase?

Mr. LADD. Some do not. I would say that there is general consensus in the bar and among those who benefit from the patent system that at least some kind of increase is in order.

Senator McCLELLAN. I don't know, there may be others—I would raise some question—there may be an issue about this maintenance fee. It seems to me like it is pretty high. I don't know. It may not be.

Mr. LADD. Let me, if I may——

Senator McCLELLAN. Off the record.

(Discussion off the record.)

Senator McCLELLAN. We will recess at this time until 3 o'clock this afternoon.

(Whereupon, at 12:25 p.m. the hearing was recessed, to reconvene at 3 p.m. of the same day.)

AFTERNOON SESSION

Senator McCLELLAN. The committee will resume.

Mr. Commissioner, do you have anything further?

STATEMENT OF DAVID L. LADD, COMMISSIONER OF PATENTS—Resumed; ACCOMPANIED BY JAMES GAMBRELL, SPECIAL ASSISTANT TO THE COMMISSIONER; P. J. FEDERICO, EXAMINER-IN-CHIEF; DANIEL DE SIMONE, LEGISLATIVE CONSULTANT; CHARLES GAREAU, PATENT SPECIALIST; DONALD ELLIS, DIRECTOR, BUDGET AND FIANCE DIVISION; AND KENNETH McCLURE, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF COMMERCE

Mr. LADD. Mr. Chairman, before we recessed I had touched upon the fact that the growing disparity of the income and expenses of the Patent Office had been noted by this committee. I mentioned a reference to the annual report of this committee for the year 1958.

The concern for this disparity is also expressed in the annual report of the committee for 1959 at page 2, where the report states that one of the principal objectives of this subcommittee is to test the possibil-

ity of increasing the revenue of the Patent Office so that the growing gap between expense and revenue may be closed.

I likewise made a very brief mention of the special user policy of the Bureau of the Budget. And I should like to make reference to a letter which I understand Mr. Bell, the Director of the Bureau of the Budget, has sent to you, sir; and also to the Bureau of the Budget Bulletin 58–3 dated November 13, 1957; and the Bureau of the Budget Circular A–25 dated September 23, 1959.

Senator McCLELLAN. Counsel, do we have each of the documents that the Commissioner has referred to?

Mr. DINKINS. Yes, sir.

Senator McCLELLAN. They may be printed in the record at this point in the order in which the Commissioner referred to them.

(The documents referred to are as follows:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., November 13, 1957.

Bulletin No. 58–3.

To: The heads of executive departments and establishments.
Subject: User charges for certain Government services.

1. *Purpose.*—This bulletin calls for the preparation of legislative proposals essential for the development of an equitable and uniform Government-wide policy on charges for certain Government services or property.

Following a careful and thorough joint interdepartmental review of this problem, the President has approved the recommendations made to him. The review, including these recommendations, is attached for information and guidance.

The President has requested the Bureau of the Budget to initiate actions in accordance with those approved recommendations. This bulletin, therefore, requests each executive agency to prepare legislative proposals for removing all present limitations or restrictions on the agency's authority to (a) recover full costs for Government services which provide a special benefit; and (b) obtain a fair market value for Government-owned resources or properties sold or leased.

This bulletin supersedes Bureau of the Budget Circular No. A–25 dated November 5, 1953, the coverage of which was more limited.

2. *Coverage.*—Except for the specific exclusions mentioned later in this bulletin the legislative proposals should include all areas in which existing legislation prohibits or restricts the application of charges or fees. The proposals should also include areas in which existing legislation is silent on the subject of such charges but where the agency considers an expression of congressional policy desirable prior to initiating charges.

Legislation shall be considered restrictive when it does not permit full cost recovery by the Federal Government for Federal services or products provided which convey to some recipients a special benefit above and beyond that accruing to the public at large. In addition, legislation shall be considered restrictive if it hampers (a) the realization of a fair market value from the sale or use of federally owned resources or property or (b) the application of sound business management principles and comparable commercial practices in the sale of such resources and property.

The areas excluded from the attached document (see second paragraph under "Coverage") are also excluded from the provisions of this bulletin. In addition, this bulletin does not apply to the disposal of property under approved programs to charitable, governmental, and related agencies or instrumentalities.

3. *Data to be submitted.*—Legislative proposals will be submitted to the Bureau of the Budget in accordance with Circular A–19, revised, not later than February 1, 1958. They shall be accompanied by a short explanation of their background and effect.

4. *Other actions.*—In those areas where present legislative authority is adequate and no legislative proposal is submitted, the head of each agency should determine and act on applying user charges in his agency in accordance with

the recommendations in the attached report and the provisions of existing law. These actions should not be deferred pending efforts to remove or clarify legislation restricting user charges in other areas.

By direction of the President:

PERCIVAL F. BRUNDAGE, *Director.*

(Attachment to the Bureau of the Budget Bulletin No. 58–3)

USER CHARGES FOR CERTAIN GOVERNMENT SERVICES

THE PROBLEM

Among the numerous services performed by the Federal Government in the public interest, many provide an added special benefit to individuals or groups. The Government is also extensively engaged in the sale and leasing of Government-owned resources and property. Uniform Government-wide policies or procedures for applying user charges, however, do not exist. Variations in charges for similar activities exist between and even within agencies, resulting in hidden subsidies, inequities, and a burden on the general taxpayer. Efforts to correct the present situation have been piecemeal and have had only limited success. The President, however, on several occasions has stated his firm belief in the principle that, as a matter of equity, the recipients of the special benefits should pay for the full applicable cost of the special services provided, and that a fair market value should be obtained from the use or sale of Government-owned resources or property.

JOINT INTERAGENCY STUDY

To achieve the above objective, the President requested that several executive agencies join together to study the problems involved and make any necessary recommendations to him. In the resulting report an overall review of agency user charge practices has been made and recommendations have been developed with respect to (1) general policies governing charges, (2) specific standards and criteria to be used in determining fees, and (3) measures for implementing a positive user charge program.

COVERAGE

The scope of the study was Government wide in its application, but the study itself covered only a selected number of agencies and operations within those agencies. The activities examined on a sample basis included licensing; testing, inspection and grading; use of air and water navigation aids and facilities; use of money and credit; publications; maps, charts and aerial photographs; special studies, recreation and tourist facilities; grazing; oil, gas, and mineral leasing and mining claims; miscellaneous land uses; and use of Government-owned patents. Selected operations which reflect the major non-Federal users or beneficiaries within each of these general activities were examined.

It was agreed that even though there had been a request to examine the fee aspects of water resources (power, flood control, and irrigation), this area should be excluded from the study because comprehensive recent studies already exist. Similarly, the areas of postal rates, fringe benefits for military and Federal employees, and sale of surplus property have been excluded from the scope of this review. Also excluded are the activities of the legislative branch, the judiciary, and the municipal governments of the District of Columbia and the Canal Zone.

GENERAL SITUATION

Basically there are two broad categories of charges: Those related to recovering the cost of providing a special service or benefit and those concerned with recovering a fair market value for the use or sale of federally owned resources or property. With respect to the first, there is no consistent approach in the application of user charges. In some cases the special services are provided by Government agencies without charge. In others the fees are equal to a portion of the costs, and in a few instances the full cost of providing the service is recovered. The method of determining costs varies from agency to agency. In

some cases all or a portion of the revenues are earmarked for use by the agency, while in others all receipts are deposited as miscellaneous receipts in the general fund of the Treasury. In several areas the exact amount of the charge is specified in legislation; in others legislation provides for a charge, but the exact amount is left for administrative determination; in a number a charge is neither specifically called for nor prohibited by legislation, but is based on an administrative determination; and in some instances a charge is prohibited by law.

ILLUSTRATIONS OF VARYING PRACTICES

Some examples illustrative of different agency charge practices are set forth below:

1. In the licensing activity, the charges range from zero to 100 percent of the costs. No charge, for example, is made for the issuance of Federal Communications Commission and Interstate Commerce Commission regulatory licenses. On the other hand, the regulatory operation concerned with the national banks by the Comptroller of the Currency is self-sustaining, and the issuance of patents and the registration of trademarks by the Patent Office is approximately 45 percent self-sustaining. Within the Federal Power Commission the licensing of utility company hydroelectric power facilities is nearly self-sustaining, while a comparable license in the natural-gas field is provided free.

2. In the field of publications some agencies refer requests for publications to the Superintendent of Documents, who sells them. Other agencies provide a similar type of publication free. In fact, the same publication may be for sale by the Superintendent of Documents and given away free by the sponsoring agency.

3. For maps and navigation charts the sales price is generally determined by applying a modified proportional cost concept (full cost of printing and distribution, including plate preparation for all copies) in contrast to the incremental cost concept (cost of printing and distribution of only those additional copies to be sold), which is used as the basis for establishing the sales price of publications sold by the Superintendent of Documents. A much greater proportion of printed maps are sold than is the case for publications. Although the practices in the mapping agencies are generally uniform, there are some inconsistencies as, for example, in the case of the Corps of Engineers. One corps district distributes its waterway bulletins and navigation charts free, while another district applies a nominal charge.

4. In the use of money and credit, the Export-Import Bank recovers costs. But this is one of the few cases of complete recovery, since the rates charged by most lending agencies are considerably below costs because of statutory limitations or program considerations.

5. In testing and inspecting, the General Services Administration recovers costs for product qualification tests for procurement, while the Department of Defense pays a large share of the costs of similiar tests. Within the Department of Health, Education, and Welfare, the Food and Drug Administration recovers the cost of testing batches of antibiotic drugs, while there is no charge for batch tests of vaccines tested by the Public Health Service, another bureau in the same Department. Due to various provisions of law, international agreements, and administrative regulations, the charge policy for inspections performed outside regular duty hours varies between inspecting agency (Treasury, Justice, HEW, Agriculture, and others), location, day of the week, and also the type of transportation inspected.

6. The Federal-aid highway program may be considered to be on a self-sustaining basis, while the Government recovers only a relatively small portion of the costs of providing airway and inland waterway navigation aids and facilities.

7. In the recreation area, the costs of conducting tours of dams are now recovered by the Bureau of Reclamation, but no charge is made by the Corps of Engineers.

Similar variations exist in the choice of methods used in determining charges for the use or sale of Government-owned resources or property. The charge may be based on competitive bidding in one agency for a resource or use of land while in another agency the charge for the same resource or use is deter-

mined by appraisal or is based on a fee schedule not necessarily related to market value. In some instances, the amount charged is specified by legislation enacted many years ago, and despite changes in values or conditions, the rate has remained the same.

8. There is a wide variation in charges between Federal agencies and private companies for grazing privileges on similar rangeland. For example, in the Klamath and Lake County area of Oregon within a radius of 100 miles, the fees per cow-month for rangeland, much of which is similar in value, vary as follows:

Bureau of Land Management (Interior)	$0.15
Forest Service (Agriculture)	.44
Indian Service (Interior)	1.38
Weyerhauser Timber Co. (private)	.99–1.08

In a 1953 study made by the Forest Service comparing the same type of privately owned land with national forest land, the following extreme differences in charges for cattle were noted:

State	National forest	Average 1953 fee per cow-month on national forests	Average 1953 fee per cow-month for similar private land
Montana	Lewis and Clark	$0.78	$5.00
Colorado	Uncompahgre	.65	6.50
Arizona	Apache	.42	$2.50–5.00
Idaho	Boise	.50	4.80
Utah	Dixie	.67	5.00

9. With respect to oil and gas leasing, the situation adjacent to the San Juan River in southern Utah is representative of the variation in governmental charge policies. The Navajo reservation lies to the south of the river and public domain on the north side. Several oil companies paid rentals of $1 per acre for the public domain for a 5-year lease, while at approximately the same time they paid $6.25 in rentals per acre for 5 years plus a bonus ranging from $1.27 to $129 per acre for leases within the reservation. The charge for a noncompetitive 5-year lease of public domain lands is one-third lower today than it was from 1935 to 1940. Likewise, the charge for oil and gas leases on lands that have been acquired by the Government is lower today than it was in 1947. The present charge is $1 per acre for a 5-year lease compared to the 1947 rate of $5 per acre for a similar period plus a bonus. In the case of acquired lands administered by the Forest Service, the average bonus amounted to over $19 per acre prior to 1947.

All leases involving Indian lands and the Outer Continental Shelf require competitive bidding. In contrast, on public domain and acquired lands, no competitive bidding is required when the lands are outside the boundary of a known geologic structure. These noncompetitive leases represent over 95 percent of the number of leases, acreage under lease, and workload.

10. In the case of mineral leasing, the Government receives a 25-cent per acre annual rental for prospecting permits for certain minerals, while permits for other minerals are granted on approximately 2 million acres with no charge.

11. Under the mining laws, title to the land is granted the claimant for $5 per acre, irrespective of timber or other nonmineral values, which may be worth several hundred dollars per acre. The $5 fee was established in 1872 and has remained the same since then.

Many of the special benefits provided by the Government service represent hidden subsidies which have developed over the years, and, in some cases, reflect efforts which were made to stimulate an "infant" industry or provide temporary aid to a specific segment of the population. As these benefits and subsidies continued, the recipients became accustomed to them, and now naturally oppose initiation of charges or any increases. Increases have not been made in many fees even though costs to the Government and values to the recipient have risen manifold.

PROGRESS TO DATE

Many inequities have been noted during the past several years, and the administration has initiated corrective action in a number of areas, including the following:

1. New and substantially higher filing fee schedules have been established by the Bureau of Land Management for public land transactions. This has raised annual receipts from this source from $397,000 to over $842,000 in the past few years.

2. After request by the Department of State, the Congress repealed a fixed service charge, established in 1789, for authenticating copies of records, thus permitting the establishment of charges commensurate with current costs.

3. The Bureau of the Budget issued circulars on fees for licensing, registration, and related activities (A–25) and for copying, certification, and search of records (A–28).

4. Separate laws were passed to assess a reasonable registration and renewal fee for brokers under the Commodity Exchange Act and to increase the fees for executing passport applications. Legislation to increase patent fees was also proposed in the last Congress to raise the proportion of costs (as currently calculated) recovered by the Patent Office from 45 percent to 78 percent.

5. Fees have also been increased for a number of uses of Federal land, such as grazing on the public domain, the sale or lease of small tracts on the public domain, summer homesites on the national forests, entrance to various national parks and monuments.

Progress has thus been made, but it has been piecemeal and quite limited in scope. In some cases the Congress rescinded actions taken by the executive branch, or caused a deferral of administration plans to increase charges. The Congress, for example, passed legislation discontinuing the fees which were being charged for certificates in lieu of lost military discharges. In view of studies being conducted by Senate committees, action was deferred on the charging of fees for licensing, registration, and related activities as proposed by the Bureau of the Budget. The study of fees for Government services which was completed by the Senate Committee on Government Operations on February 1, 1956, concluded that the congressional committee having oversight jurisdiction of the agency providing the special benefit should (1) ascertain the need for adjusting fees and (2) initiate appropriate legislative action required to implement the agency fee program.

CONCLUSIONS

The problem should be examined from the viewpoint of the Government as a whole. While limited success might be obtained by continuing a piecemeal approach, greater strides can be made from a Government-wide approach to assure equity and comparability in charges for related services and for use or sale of Government-owned resources or properties. It is felt that this approach would enlist the support of groups concerned with the general overall objectives of equity, fairness to the general taxpayer, and fiscal soundness. It would provide the basis for eliminating arguments sometimes advanced by individual pressure groups that they have been singled out for discriminatory treatment. In addition, it is believed that the existence of a clear expression of administration and congressional policy would provide the necessary stimulus for an aggressive program.

The successful implementation of the recommendations which follow will (a) provide greater equity in the provision of Government services, (b) reduce pressures for special services, (c) provide a yardstick to evaluate future legislation and program requirements, and (d) increase receipts by many millions of dollars annually.

RECOMMENDATIONS

That an active approach to the solution of the user charge problem be developed and that the following policies and principles be adopted on a Government-wide basis:

A. General policy for charges

1. *Cost recovery for services.*—Where a service (or privilege) provides special benefits above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(*a*) Enables the beneficiary to obtain more immediate and substantial gains (sometimes measurable in monetary terms) than those which accrue to the general public (e.g., granting a patent); and/or

(*b*) Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes); and/or

(*c*) Is performed at the request of the recipient and is above and beyond the services provided to other members of the same industry or group, or to the general public (e.g., passports, visas, airman's certificates).

2. *Sale or use of federally owned resources or property.*—The fair market value should be realized from the sale or use of federally owned resources or property. Sound business management principles and comparable commercial practices should be followed so far as practicable and feasible. Generally this activity should be revenue producing and should not be based on the recovery of costs alone.

B. Costs, fees, and receipts and their determination

1. *Agency responsibility.*—The primary responsibility for the initiation and development of a program of charges and fees continues to be in the agency. The agency should:

(*a*) Determine the extent of the special benefits provided;

(*b*) Apply accepted governmental accounting principles in determining costs;

(*c*) Establish the charges; and

(*d*) In the case of the use or sale of Government-owned resources or property, apply sound business management principles and comparable commercial practices.

2. *Determination of costs to be recovered.*—The computation of the cost to the Federal Government of providing services shall be in accordance with accepted governmental accounting principles. Costs shall be determined or estimated from the best available existing records in the agency, and should not necessitate the establishment of new cost accounting systems. The cost computation shall include all direct and indirect costs of carrying out the activity, including but not limited to:

(*a*) Salaries, employee leave, travel expense, rent, cost of fee collection, postage, maintenance, operation and depreciation of buildings and equipment, and payroll burden costs (e.g., retirement and employee insurances);

(*b*) A proportionate share of the Cabinet department (or other agency) supervisory costs;

(*c*) A proportionate share of military pay and allowances, where applicable;

(*d*) The costs of enforcement, research, establishing standards, and regulation to the extent the agency head determines these costs are properly chargeable to the activity.

3. *Establishment of fees to recover costs.*—The maximum fee will be governed by the total costs involved and not by the value of the service to the beneficiary. The rate of fee established should not seriously impair the objectives of the program or other public policy. The cost of providing the service shall be reviewed at least once every 3 years and the fees adjusted accordingly.

The agency may make exceptions to recovery of full costs under the illustrative conditions stated below:

(*a*) The cost of collecting the fees would be an unduly large part of the receipts from the activity.

(*b*) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

(*c*) Comparable fees are set on a reciprocal basis with a foreign country. (In line with the policy of requesting legislative changes for the removal of legal limitations, the Department of State should endeavor to renegotiate those international agreements which prohibit the establishment of a fair and equitable user charge for special benefits provided by the Federal Government.)

(*d*) The special beneficiary is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(*e*) Payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program.

The application of such exceptions would be subject to the review, when necessary, of the advisory committee on fees and charges (see Recommendations for Implementation of Policy).

4. *Dispostion of receipts.*—All receipts shall go to the general fund of the Treasury as miscellaneous receipts except:

(*a*) Where it is intended that an agency or program or some part of a program be operated on a fully self-sustaining basis from receipts for services performed or proceeds from the sale or use of Government-owned resources or property.

(*b*) Where the agency head can demonstrate that earmarking of receipts is necessary to encourage the initiation or increase of fees or charges.

(*c*) Where the receipts are used to offset the cost of authorized special services or programs for which the demand is irregular and unpredictable, such as inspections performed upon request outside of regular duty hours.

The present system of sharing receipts with States and counties for the use of land and sale of resources should be left undisturbed.

C. Recommendations for implementation of policy

To implement an equitable and uniform user charge program in line with the general policies, it is recommended that:

1. The Bureau of the Budget request the executive agencies to prepare legislative proposals removing all present limitations or restrictions on the agencies' authority to (a) recover full costs for Government services which provide a special benefit; and (b) obtain a fair market value for Government-owned resources or properties sold or leased. These proposals should incorporate a recommended expression of congressional policy on charges and fees, and authorize the President to initiate such rules, regulations, and advisory groups as he deems necessary to implement an aggressive and continuing user charge program throughout the Government.

The agency proposals should also include areas where legislation is now silent on the initiation of user charges and where the agency considers an expression of congressional policy desirable prior to initiating charges.

2. This program of user charges should be carried through within the existing governmental framework in both the agencies and the Bureau of the Budget. The Bureau of the Budget would continue to exercise its coordinating role.

3. After enactment of authorizing legislation, the President should designate an advisory committee of five qualified persons, familiar with Government operations, to advise the President and the agencies and to provide guidance to the Bureau of the Budget on the public policy considerations involved in applying user charges. The advisory committee would concern itself principally with determinations of the extent of public interest or special interest on those issues referred to it by the agencies or by the Bureau of the Budget. The Bureau of the Budget would furnish the secretariat for this committee.

4. Increased efforts to carry out the recommended policies should be effected in those areas where legislative authority already exists for initiating or increasing charges, concurrent with the efforts to obtain legislation for the removal of restrictions in other areas.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., September 23, 1959.

Circular No. A-25.

To: The heads of Executive Departments and Establishments.
Subject: User charges.

1. *Purpose.*—Bureau of the Budget Bulletin No. 58-3 of November 13, 1957, set forth some general policies for developing an equitable and uniform system of charges for certain Government services and property. This circular incorporates the policies contained in that bulletin and gives further information with respect to: (a) the scope of user charge activities; (b) guidelines for carrying out the approved policies; and (c) agency submission of periodic status reports. It also prescribes Standard Form No. 4 on which periodic status reports are required.

Because this circular applies also to the areas previously covered by Bureau of the Budget Circular No. A-28 of January 23, 1954, that circular is hereby rescinded.

2. *Coverage.*—Except for exclusions specifically made hereafter, the provisions of this circular cover all Federal activities which convey special benefits to recipients above and beyond those accruing to the public at large. The specific exclusions which continue to be governed by separate policies are fringe benefits for military personnel and civilian employees; sale or disposal under approved programs of surplus property; postal rates; interest rates; and fee aspects of certain water resources projects (power, flood control, and irrigation). In addition this circular does not apply to activities of the legislative and judicial branches, the municipal government of the District of Columbia, the Panama Canal Company, or the Canal Zone Government.

3. *General policy.*—A reasonable charge, as described below, should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit.

(*a*) Special services.

(1) Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or

(b) Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft); or

(c) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours).

(2) No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public (e.g., licensing of new biological products).

(*b*) Lease or sale.—Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles, and so far as practicable and feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

4. *Agency responsibility.*—The responsibility for the initiation, development, and adoption of schedules of charges and fees consistent with the policies in this circular continues to rest with the agency. Each agency shall:

a. Identify the services or activities covered by this circular;

b. Determine the extent of the special benefits provided;

c. Apply accepted cost accounting principles in determining costs;

d. Establish the charges; and

e. In determining the charges for the lease and sale of Government-owned resources or property, apply sound business management principles and comparable commercial practices.

5. *Cost, fees, and receipts, and their determination.*—

(*a*) *Determination of costs.*—Costs shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose. The cost computation shall cover the direct and indirect costs to the Government of carrying out the activity, including but not limited to:

(1) Salaries, employee leave, travel expense, rent, cost of fee collection, postage, maintenance, operation and depreciation of buildings and equipment, and personnel costs other than direct salaries (e.g., retirement and employee insurance);

(2) A proportionate share of the agency's management and supervisory costs;

(3) A proportionate share of military pay and alowances, where applicable;

(4) The costs of enforcement, research, establishing standards, and regulation, to the extent they are determined by the agency head to be properly chargeable to the activity.

(*b*) *Establishment of fees to recover costs.*—Each agency shall establish fees in accordance with the policies and procedures herein set forth. The provisions of this circular, however, are not to be construed in such a way as to reduce or eliminate fees and charges in effect on the date of its issuance. The maximum fee for a special service will be governed by its total cost and not by the value of the service to the recipient. The cost of providing the service shall be reviewed every year and the fees adjusted as necessary. In establishing new fees and increasing existing fees the agency may make exceptions to the general policy (paragraph 3, above) under such conditions as illustrated below.

(1) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

(2) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

(3) The recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(4) Payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program.

(*c*) *Disposition of receipts.*—Legislative proposals shall generally avoid disturbing the present rule that collections go into the general fund of the Treasury as miscellaneous receipts. However, exceptions may be made where:

(1) It is intended that an agency or program or a specifically identifiable part of a program be operated on a substantially self-sustained basis from receipts for services performed or from the sale of products or use of Government-owned resources or property.

(2) The agency can show that the initiation or increase of fees or charges is not feasible without earmarking of receipts.

(3) The receipts are in payment of the cost of authorized special benefits for which the demand is irregular or unpredictable, such as inspections performed upon request outside the regular duty hours.

This circular is not intended to change the present system of sharing with States and counties receipts from the lease of certain lands and the sale of certain resources.

6. *Changes in existing law.*—In cases where collection of fees and charges for services or property in accordance with this circular is limited or restricted by provisions of existing law, the agencies concerned will submit appropriate remedial legislative proposals to the Bureau of the Budget under the established clearance procedure, as provided in Bureau of the Budget Circular No. A–19.

7. *New activities.*—In the establishment of new Federal activities which would provide special benefits, the agencies concerned are to apply the policies and criteria set forth in this circular.

8. *Reports to the Bureau of the Budget.*—Each agency shall make a report by December 31, 1959, for each bureau or comparable organizational unit, of the costs and charges for all services or property covered by this circular, and shall also make a report of changes not later than December 31 of each succeeding year as a result of its annual review of such costs and charges. The initial report for any new agency hereafter established (including those established by reorganization) shall be submitted on December 31 following the end of the first fiscal year during which the agency was in operation. Each report shall cover the situation as of the preceding June 30, and shall be prepared in accordance with the instructions set forth in the attachments to this circular.

By direction of the President:

MAURICE H. STANS, *Director.*

(Attachment A to Circular No. A–25)

INSTRUCTIONS FOR THE PREPARATION OF ANNUAL REPORTS ON USER CHARGES

1. *Form and coverage of reports.*—Reports shall be prepared on Standard Form No. 4, as illustrated in attachment B. An original and two copies will be required.

The initial report should represent a complete inventory of all services of the agency which provide a special benefit to recipients above and beyond those accruing to the public at large, and all activities under which federally owned resources or property are or could be sold or leased.

Subsequent reports covering the annual review of costs and charges shall cover only (a) services and activities not reported earlier; (b) services and activities for which charges have been changed; and (c) services and activities for which changes in the applicable category (as described below) have taken place.

2. *Preparation of Standard Form No. 4.*—(*a*) A separate form will be prepared for each of the following categories, where applicable:

(1) Special services for which existing charges are producing full cost recovery; and lease or sale activities which are returning fair market value.

(2) Special servics for which existing charges are producing less than full cost recovery; and lease or sale activities for which less than fair market value is being obtained.

(3) Special services and activities for which no charges are currently being made, and for which charges are apparently required by the provisions of this circular.

(4) Special services and activities for which no charges are to be made in accordance with the policy guidelines and exceptions provided in this circular.

(5) Services and activities which have been discontinued or transferred to other agencies since the previous report. (This category is not applicable to the initial report.)

The category of items covered by each form will be identified in the heading by placing an "X" in the box corresponding with the number of the category as shown above. Forms need not be submitted for categories in which there is nothing to be reported.

(*b*) Columns on the form will be completed as follows:

(1) Enter the identification number for the service or activity. Each service and activity shall be assigned an identification number which shall be retained from year to year, to facilitate identification in future annual reports. Agencies may devise their own coding systems for this purpose.

(2) List each special service provided under a heading "Special services," and each lease or sale activity under a heading "Lease or Sale."

(3) Enter the unit for measuring the service or property provided.

(4) Enter the amount of the charge being made for each unit as of the preceding June 30. In cases where there are various rates for differing situations, a summary schedule of rates may be attached in lieu of listing each rate individually.

(5) Enter the date the charge shown in column 4 became effective.

(6) Enter the amount of the charge which was made previous to the date in column 5.

(7) Enter the number of units of activity for the last completed fiscal year.

(8) Enter (in thousands of dollars) the cost of providing the service or the fair market value of resources or property sold or leased.

(9) Enter (in thousands of dollars) the amount of collections (net of refunds) during the last completed fiscal year.

(10) Enter the symbol of the receipt account, appropriation account, or fund account (excluding deposit funds) to which the collections were or will be credited.

(11) Enter any pertinent explanatory comments relating to the information shown in the preceding columns. On reports covering categories 2, 3, and 4, specifically note in this column, for each item, the reason(s) that full cost recovery or fair market value is not obtained. Also indicate whether full cost recovery for special services or fair market value for lease and sale activities can be obtained under existing law; the status of specific legislative proposals (e.g., under study, drafted, cleared, introduced, or reported); and the status of proposed administrative changes in fees and charges, including effective dates.

On reports subsequent to the initial report, indicate in this column the previous category in which the item was reported. On reports covering category (5), identify the services and activities transferred to other agencies or organizational units and the agency or organizational unit to which the transfer was made.

ATTACHMENT B

Standard Form [illegible]
(September 1[illegible])
Bureau of the Budget
Circular No. A-[illegible]

USER CHARGES REPORT

CATEGORY OF ITEMS (Check)
1 [X] 2 [ ] 3 [ ] 4 [ ] 5 [ ]

Agency	Bureau	Contact	Date submitted
Department of Government	Bureau of Public Affairs	John Doe, Ext. 555	December 15, 19[illegible]

Identification Number	SPECIAL SERVICES OR ACTIVITIES	CHARGE AS OF JUNE 30			Previous charge	ACTIVITY, FISCAL YEAR 19				REMARKS
		Unit	Amount	Date established		Volume	Cost or fair market value (Thous.)	Collections (Thous.)	Collections symbol	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	SPECIAL SERVICES:									
PA-101	Licenses under Federal Licensing Act	Application and renewal	Schedule	12/12/58	Schedule	10,155	$195	$200	740899	See fee schedules attached.
PA-102	Entrance to Central National Park	Permit	$1.00 per car	7/ 7/58	$.75	49,765	48	50	740810	
PA-103	Registration of documents	Document	2.00	11/20/57	1.75	3,789	8	8	7490100	
	SALE OR LEASE:									
PA-105	Lease of land for commercial purposes	Acre	3.00 to 12.50	5/13/57	2.00 to 11.50	12,250	52	53	741830	

Standard Form No. 4
(September 1959)
Bureau of the Budget
Circular No. A-25

USER CHARGES REPORT

CATEGORY OF ITEMS (Check)
1 ☐ 2 ☒ 3 ☐ 4 ☐ 5 ☐

Agency	Bureau	Contact	Date submitted
Department of Government	Bureau of Public Affairs	John Doe, Ext. 555	December 15, 1959

Identification Number	SPECIAL SERVICES OR ACTIVITIES	CHARGE AS OF JUNE 30			Previous charge	ACTIVITY, FISCAL YEAR 19				REMARKS
		Unit	Amount	Date established		Volume	Cost or fair market value (Thous.)	Collections (Thous.)	Collections symbol	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	SALE OR LEASE:									
PA-104	Rental of floor space for business concessions	Sq. ft.	10.00	6/18/59	8.00	8,150 to 10,000	85	79	745999	1,850 sq. ft. rented for part of year only.
	(Supplies of Standard Form No. 4 will be available in GSA Supply Center by October 30, 1959.)									

Mr. LADD. Thank you, Mr. Chairman. I do not intend to spend very much time in elaborating upon what I consider to be one of the central points of the controversy to be resolved by the subcommittee and by the Congress in the consideration of this legislation, namely the question of how much of the expenses of the Patent Office should be borne by the public as a whole and how much by the special beneficiaries. I do think it relevant, however, to quote from the 1959 report of this subcommittee to indicate that the special user theory has some support:

> Whether the gap between the Patent Office income and expenditures is narrowed by establishing renewal fees or by increasing initial fees, a larger share of the cost of the patent system probably ought to be borne by the patentees. While it may be assumed that the functioning of the system itself confers tangible public benefits for which the public should reasonably pay, it is also true that the system is intended to confer and does confer specific financial advantages upon the persons who make use of the system. It therefore does not seem unfair to provide that those who receive the advantages should contribute a major share of what the system costs.

As I mentioned this morning, there is a general consensus, I believe, in the bar and among those persons who are interested in patent matters that, especially inasmuch as the basic Patent Office fees have not been increased since 1932, that some rise of some order is in order.

As a matter of fact, there is in the record of the hearings in the other House a letter from the U.S. Chamber of Commerce which endorses the special user theory and specifically recommends that the Patent Office recover not 75 percent but 100 percent of its total expenditures.

Moreover, there is some support for almost every feature of the bill. For example, I will explain later that there is an effort in the bill to encourage practice before the Office which would allow us to examine applications more expeditiously and I think more fairly. And there is a differential fee for independent and dependent claims which, as I say, I will explain later.

This concept, for example, has been endorsed by the New York Patent Law Association, although disapproved by the Patent Section of the ABA, as no doubt a later witness can elaborate for you in detail.

I will add, as I have insisted before bar associations across the country, that the Patent Office is under great stress now, and that this bill has not been drafted for the willful convenience of a Government agency. It has been drafted, rather, in an effort to rationalize our practice in the Patent Office and allow us to handle the backlog which has burdened this Office for many, many years.

The problems which we are trying to be responsive to are those which have been analyzed in trenchant detail in the annual report of this subcommittee which was published, I think, in March or April of this year. The bill generally is directed at two objectives: It is directed first at the objective of increasing the revenue of Office. And that I have already explained. There is an objection that the imposition of these fees might depress or discourage filings. We have included a table in the prepared statement, table 10, which shows that in the experience abroad where fees have been increased—with the exception of the experience in Germany—the increase in fees has seemed to have no perceptible effect on the number of applications which are filed.

I might say that a full recovery of the expenses of the Patent Office, which we are not here advocating, is not unprecedented either in the United States or abroad, as figures 1, 3, and 4 attached to the prepared statement will show.

I think it is also important to understand that the fees paid to the Patent Office represent but a fraction of the total cost of obtaining a patent. By far the greater proportion of expenses connected with obtaining patents from the Patent Office is for legal and other expenses. And as a matter of fact, under the present law, according to our calculations, the basis of which is set forth in great detail in the prepared statement, not more than 9 percent of the total cost of obtaining patents is represented by Patent Office fees, and under the revised schedule of fees as proposed by this bill it would not exceed 20 percent.

I think it is also relevant to call attention to a statement made by my predecessor, Mr. Watson, in his testimony before the House committee on H.R. 10966, where he said:

> I will say this, however, that I have never seen an invention of importance fail to be patented because of the impoverishment of the inventor, but he will have to surrender part of his control.

It is my understanding that the House committee requested of prospective witnesses that they file data available to them about the costs, all of the costs of obtaining patents, so that the relationship of the Patent Office fees to the total cost might be more clearly understood. And as a matter of fact, there is a letter written on behalf of the NAM which appears in the record of those hearings which I interpret to say that that information would be forthcoming. According to my information, however, the data requested have not yet been supplied.

I have explained already in my testimony this morning that most of the increase represented by the proposals in this bill would represent a cost-of-living adjustment between the 1932 fees and those which we propose to institute at this time.

We believe that the provisions of the bill will lead to better practice in the Patent Office. We believe that they will in the long run tend to reduce the long pendency of applications in the Office with which this committee has long been concerned, as evidenced by the reports of the committee in 1956, 1957, 1960, and 1962 at pages 6, 4, 20, and 13, respectively.

Let me talk briefly about the kind of fees which are proposed. We propose a modest increase, $10 from $30 to $40, in the filing fee. We propose a modest increase from $30 to $40 in the issue fee.

There is another important element of issue fee, however. And that is a charge based on the number of pages of specifications and the number of sheets of drawings.

There is a provision which imposes a charge for independent claims over one, and distinguishes in the charges between dependent and independent claims.

There is also a proposal to impose maintenance fees which we began to discuss this morning, which would be $100 in the 5th year, $200 in the 9th year, $300 in the 13th year.

In addition to these, there are also fees proposed which I would consider minor, an increase in the fee for appeals, the recordation of assignments, and for trademark applications.

And now I would like to turn to the maintenance fees which I characterized this morning as the most controversial aspect of this legislation.

We have proposed a schedule of maintenance fees for one simple reason. Given a decision on the question of what percentage of our costs we should recover in the Patent Office, the question then arises, how should these revenue-producing fees be distributed. We have already stated that this legislation proposed to recover 75 precent of our presently budgeted expenditures. Operating from that basis, we have suggested the imposition of maintenance fees which, let me be frank, some people characterize as taxes—and I have no objection to that characterization—in order to avoid raising the filing fees and the other fees.

One objective was to keep the filing fee as low as possible to avoid the discouragement of filing applications.

There is another policy at issue, I would submit, which is here involved. And that is a belief that part of the costs of the administration of the patent system should be imposed upon those people who benefit from it. And I take it that it is not altogether inconsistent with the opinion that was expressed by this committee in the 1959 report:

> The subcommittee staff believes that with adequate safeguards to prevent lapsing of a patent right through inadvertence, renewal fees appear to be a fair means of putting the cost burdens of the patent system where they belong; that is, on the patents which are able to earn a commercial reward.

The maintenance fees will allow a person to decide at a time after issuance whether or not his patent is of sufficient commerical value to him to pay the maintenance fees and thus keep it in effect. As I have explained, the overwhelming majority of the patents which do come into use at any time come into use either prior to the filing of the application or during the pendency of the application.

There is another provision in the bill which has been inserted in response to the objection that the bill would bear particularly hard upon the small, indigent, individual inventor. Here as a premise it is important to understand that over 70 percent of all patents which are issued today are issued to corporations. Moreover, for the individual inventor who has not signed his patent a special provision has been built into the bill so that at the time that the first and second renewal fees become due, and if he has not received revenue or benefit from his patent equal to the value or the cost of the renewal fee, he may file an affidavit to that effect, and thereby defer the payment of the renewal fee. At the 13th year, however, he must fish or cut bait. But, as I have said, since the overwhelming majority of the patents which are going to go into commercial use do so either prior to application or during pendency, this means that very, very few risks have to be undertaken.

I might say that the imposition of renewal fees is not universally opposed by the bar or by industry, and as a matter of fact, this particular aspect of the bill was supported by my predecessor, Mr. Watson, in the hearings before the House.

Let me turn now to the charges for independent and dependent claims. And it will help if I give a brief explanation of what is involved.

A claim is a kind of definition which appears at the end of a patent specification, and defines the scope of the protection. The claims can

be either independent or dependent in form. An illustration of this is given on figure 14. If you will compare those claims in the second column in independent form and in the right-hand column in dependent form, those claims are of identical scope.

I need not say that the dependent claim is much easier to examine. We did run a controlled experiment in the Patent Office and proved out statistically that this was so. But I will submit that the best evidence on this point is not even the controlled experiments. The best evidence on that will be testimony of two men from the Patent Office Society. They are experienced examiners who do this day in and out, and they can tell you the difference between examining an independent and a dependent claim.

Let me emphasize this. For the basic fee an applicant will have one independent claim and nine dependent claims without further surcharge.

Moreover—and let me emphasize this point strongly—we are not forbidding the use of independent claims. What we are trying to do is to recover a reasonable part of the additional cost upon the Office for examining claims in that form. In short, if the applicant feels that it is important to him to have independent claims, he may have them. But he must pay for them.

There are objections that use of dependent claims is undesirable because dependent claims can be left dangling after a patent has been adjudicated and the independent claim held invalid. The answer to that is that the applicant always has recourse to reissue for the narrower claims if he wants. And moreover, about 1 percent of all the patents which are ever issued get into litigation at all.

I have now only two more points to make. One goes to administrative costs. Many objections have been made that the increase in the administrative costs of this bill would heavily offset the increased revenue which would be recovered. This is an objection which tends to be made against any new legislation. But we have made estimates of the cost of administration. They are set forth in detail in appendix C–2 to the statement. And it is here important only for me to say that the cost of administration will represent less than 1 percent of the increase in income which would come to the office as a result of this legislation.

Senator McCLELLAN. Is it your contention that it would discourage people from applying for patents, is that what you mean?

Mr. LADD. No, I am talking now about the cost internally to the Patent Office for administering the new legislation, keeping track of when maintenance fees are due, what kinds of charges have to be made on the basis of dependent claims——

Senator McCLELLAN. Are we contending that the cost of administration will equal revenues?

Mr. LADD. That is the objection. I might say that from the people who have objected to the legislation on this basis I have seen no alternative analysis of the expected costs of administration which would contradict those which we have placed in the record.

Let me turn finally to the small inventor, for whom we must always have respect. But unfortunately in debates on fees the debate often tends to get colored somewhat emotionally by his plight. As I have said, over 70 percent of the patents which are issued today are issued to corporations. We have tried to take care of the small inventor by

the imposition of maintenance fees which allow him to postpone the payment of fees until such a time as he can see whether the patent is going to be commercially valuable to him. In this way, by the use of maintenance fees, we have been able to keep the filing fee quite low.

Finally, as to the usual fee, which will also apply to the small inventor, we have on the basis of studies in the office discovered that the applications from independent inventors, applications which have not been assigned, tend to be small in size, and therefore would not incur as heavy an issue fee under this bill as the larger applications.

That completes my statement, Mr. Chairman. And I will be glad, obviously, to answer any questions that you or the other members of the committee may have.

Senator McClellan. Very well.

I still have a question on this maintenance. I am not sure that that would be vital. The rest of it generally I see no objection to. But this is an innovation, this maintenance fee. And I am wondering if you are not starting in at a pretty high figure.

Mr. Ladd. There are several points I would like to make in response to that. There are only two major industrialized countries today which do not have maintenance fees: Canada and the United States. There are those who argue that by virtue of that difference our patent system is superior, and I leave them to make their argument. But in any event it cannot be argued that maintenance fees are unprecedented.

Secondly, the maintenance fees which are proposed by this legislation are lower in dollars than those which are imposed by Germany, for example.

Senator McLellan. You mean lower in cost?

Mr. Ladd. If you took the total amount of fees which are required to be paid Germany to maintain the patent for its full term, and translated that sum from deutsche marks into dollars, the sum proposed in this bill for maintenance fees in the United States would be lower.

Senator McClellan. How long has Germany had the system?

Mr. Ladd. Many years.

Mr. Federico. They have had it practically from the beginning of their patent law, 1877.

Senator McClellan. Let me ask you: What are anticipated revenues from this item, annual revenues?

Mr. Ladd. That is shown on figure 7. And it is over $5.5 million.

Senator McClellan. The proposed figure is over $5.5 million with this maintenance fee?

Mr. Ladd. That is right, $5,750,000, to be exact.

Senator McClellan. It occurs to me that it is a little high, since you are just starting it. It might be better to put it into effect at a lower rate for the next half a dozen years or more and then possibly revise it upward.

Mr. Ladd. Mr. Chairman, let me say this: It is for this committee to decide, in the light of the recommendations of the Bureau of the Budget and the Department of Commerce, whether it agrees that the Patent Office should recover the level of fees which we suggest. That decision, sir, obviously is yours. If our judgment on this is accepted, then one must make the choice of where these fees are to be imposed. Now, in the first bill which was introduced by you at the request of the Department of Commerce, the maintenance fees were substantially higher.

Senator McCLELLAN. I introduced it by request. That doesn't mean that I subscribe to it.

Mr. LADD. I understand that, sir.

Senator McCLELLAN. I subscribe to the need of the legislation to increase the fees, I think.

Mr. LADD. Let me make it clear, Senator, I carefully explained that it was introduced by request, because I understood what the introduction of a bill by request means.

Senator McCLELLAN. We frequently introduce bills by request of an agency of the Government to get the issue before the legislative body for the processing. And in the processing of it you may agree that it is good, or you may conclude that it needs modification.

Very well.

Mr. LADD. To conclude that point, the main difference between the bill as originally submitted and the revision about which we are talking here is that some of the revenues which are proposed to be recovered by the higher maintenance fees of the first version we now propose to recover by what we call the regulatory features of the bill, namely, fees geared to the size of the patent and to the form of the claims.

Senator McCLELLAN. Let me ask you this: As I understand it now, your estimated revenues, I think, will amount to three-fourths of the cost of operating the Patent Office?

Mr. LADD. Yes; and that is based upon our current budget.

Senator McCLELLAN. If you introduced the maintenance fee as proposed by you and reduced it to something like half, say $2.5 million of that anticipated $5.75 million, what percentage then would we recover of revenues of the cost of operating? Take off about $2.5 million or $3 million and let's see what we would have.

Mr. LADD. Approximately 65 percent.

Senator McCLELLAN. Would it amount to 10 percent of 100 percent; in other words, 10 percentage points? In other words, reduced from 75 to the anticipated 65, or something around two-thirds that you would be recovering of the cost of operating?

Mr. LADD. That is correct.

I might make this clear also, Senator. The maintenance fees, of course, would be prospective in their operation; they would not apply to patents which have already been issued. As a result, therefore, there would be no recovery for maintenance fees at all until 5 years after the enactment of the legislation.

Senator McCLELLAN. Let me ask you, now, would it be retroactive?

Mr. LADD. No; it will not be.

Senator McCLELLAN. In other words, on patents already issued there would never be any maintenance fee?

Mr. LADD. That is correct; there would not be.

Senator McCLELLAN. It would only apply to future patents?

Mr. LADD. That is correct.

Senator McCLELLAN. Then the fellow who got his patent last year will not have to pay, whereas if this bill goes into effect whoever gets his patent this year will have to pay?

Mr. LADD. Depending upon the effective date of the legislation. But it is entirely prospective in operation.

Senator McCLELLAN. The cutoff date is the date the law goes into effect?

Mr. LADD. That is correct.

Senator McCLELLAN. I guess there is no way to avoid it, there will have to be some date, some line of demarcation to separate those against whom it would be assessed and those against whom it wouldn't be.

Mr. LADD. That is right.

Senator McCLELLAN. But this does not apply to patents which have been granted and are now running, and it is only prospective as to the future?

Mr. LADD. That is correct.

Senator McCLELLAN. They do raise the question, then, that this is going to discourage incentive and initiative, is that the principal objection to it?

Mr. LADD. That is one of the objections. I would not call it one of the principal ones. My answer is twofold. In the first place, the patent office fees represent but a fraction of the total cost of obtaining a patent. Under this bill, they would represent, by our estimates, the basis of which is shown in this statement, less than 20 percent of the total cost of obtaining the patent.

Secondly, the experience abroad shows that the raising of fees has not had a perceptible effect, with the exception of Germany, and there it was not great.

Senator McCLELLAN. With the exception of Germany?

Mr. LADD. Of Germany, and there the effect was not great, assuming that the effect was from the fees. And for that reason I do not believe myself that the imposition of these fees will depress the incentive to apply for patents.

Senator McCLELLAN. Senator Kefauver?

Senator KEFAUVER. Mr. Chairman, first, I might acknowledge that I am not as familiar with the patent laws and matters as I would like to be. But I agree with the chairman. This strikes me as a rather high maintenance fee, at least to start with.

I believe you have said that about 30 percent of the patents issued are to individuals.

Mr. LADD. That is correct, Senator.

Senator KEFAUVER. And if you include small corporations, that would bring it up to 50 percent?

Mr. LADD. I have no way of making that estimate.

Senator KEFAUVER. I think there are some estimates showing that that might be true.

This might be a real burden on an individual intrepreneur who might not have very much money.

And then another thing, Mr. Commissioner, why do you break it up into three installments? As I get it here, it is the 5th year, the 9th year and the 13th year. Efficient companies, of course, would keep books and records. But if 30 percent of these people are individuals, might not they have a hard time keeping up when their payments are due?

Mr. LADD. There are several comments I can make, Senator Kefauver. In the first place, the period was chosen to try to give a substantial time between the issuance of a patent and the due date of the first maintenance fee in order to enable the patentee to determine whether his patent has commercial value to him.

Secondly, to avoid the hardships which would be imposed upon the individual; that is, the owner of an unassigned patent, the provi-

sion has been built into the bill that if he has not received income equal to the amount of the fees, he may by filing an affidavit defer the first and second payments, and in that way we have tried to avoid a hardship.

I might say that in some foreign countries the maintenance fees which are required to be paid must be paid annually. As a matter of fact, maintenance fees originated in some countries as a system of installment payment. In England, prior to 1852, the fee for obtaining a patent was in the neighborhood of $500, payable before the patent was granted. And to ease this burden the British instituted a system whereby only some of this amount was payable before the patent was granted, and the remainder in two installments due at certain intervals after the patent had been granted. Later, the installments were made more frequent and the amounts reduced.

Senator KEFAUVER. When you compare our patent system with those of foreign countries, isn't it true, though, that traditionally the United States has more individual inventors than they do in most of the foreign countries?

Mr. LADD. That I can't answer. Perhaps Mr. Federico can answer it for you.

Mr. FEDERICO. The proportion of patents issued to corporations in most of the major foreign countries now runs about 80 percent, whereas in the United States it is presently around 70 percent.

Senator KEFAUVER. So then there are more individuals who get patents here than in foreign countries?

Mr. FEDERICO. Yes.

Senator KEFAUVER. Isn't it true, Mr. Ladd, that some of these people who invent a better mousetrap, or some new invention, are sometimes—I wouldn't say eccentric, but they spend their lives working on something they are interested in, and they do not have very much money?

Mr. LADD. Of course, that is true.

Senator KEFAUVER. Do you plan to send notices to the holders of patents when their maintenance fee is due like the Internal Revenue Service does?

Mr. LADD. It is not provided for in the bill, and I personally would not recommend it. We do propose to print on the patent issued a schedule of dates when the fees are due. Many American law firms and lawyers, by virtue of handling the payments of foreign maintenance fees owned by their clients, have established systems for keeping account of the due dates of these fees. And, as a matter of fact, a recent article in the Journal of the Patent Office Society, mention of which is included in the prepared statement, indicates how this can be done.

Senator KEFAUVER. Mr. Ladd, I can't even remember when my insurance policy premiums are due except when I get a notice from the company.

Mr. LADD. I suspect, sir, that if your lawyer was handling your affairs he would remember when they were due, especially if he were getting a fee for handling your affairs.

Senator KEFAUVER. A small man wouldn't have a lawyer. There was Thomas Edison, for instance.

Mr. LADD. I take exception to your statement that the small man does not have a lawyer, because well over 75 percent of the applications received in our office are prepared by an attorney.

Senator KEFAUVER. That may be true, but that doesn't mean that he has a lawyer on an annual retainer basis.

Mr. LADD. That is quite true. Many corporations do not have a lawyer on an annual retainer basis.

Senator KEFAUVER. But they have better ways of keeping books and records. I know I have had an experience, Mr. Ladd, and I am sure Senator McClellan has had some, too, where an individual will come to us who thinks he has an invention worthwhile, and we will give him the name of some patent lawyer that he can go to see.

I think there ought to be some provision for sending out notice to the holders of patents as to when their maintenance fees would be due.

Mr. LADD. If that provision were to be included, the estimate for additional administrative costs of including such requirements for notice on the part of the Office is given in appendix C–3.

Senator KEFAUVER. How much would that amount to, Mr. Ladd?

Mr. LADD. Approximately $35,000 additionally.

Senator KEFAUVER. $35,000 a year?

Mr. LADD. Yes.

Senator KEFAUVER. Well, comparatively that is rather a small amount.

Mr. LADD. I agree, it is a negligible amount compared with the total amount of revenue that is expected to be recovered by the Office.

Senator KEFAUVER. I believe that is all, Mr. Chairman.

Senator MCCLELLAN. Counsel?

Mr. DINKINS. After Senator Kefauver's question a few minutes ago, Mr. Ladd, you referred to this 96 percent of applications for patents filed by individuals other than inventors. I notice that that appears on page 62 of your statement. And I take it you mean by that that they are either handled by patent lawyers or patent agents.

Mr. LADD. That is correct, persons registered, licensed to practice before the Office.

Mr. DINKINS. And that would leave 4 percent filed by the inventors themselves?

Mr. LADD. That is correct.

Mr. DINKINS. I notice in your statement over on table 6 you show that the total legal fees in individual patent cases, not counting the field of interferences, the current fees run between $450 and $900 per case.

Mr. LADD. That is correct.

Mr. DINKINS. Now, when those figures are contrasted with your issuance fees, which we have raised from $30 to $40, it shows that the other legal expenses are much greater, doesn't it?

Mr. LADD. Yes, it does. To be fair, however, I want to point out that the issue fee includes not only a basic $40 fee, but also an additional fee based upon the number of pages of specifications and sheets of drawings. But still your point holds, Counsel.

Mr. DINKINS. Mr. Ladd, there has been a lot stated about the individual inventor, how you can extend the time for him to pay these maintenance fees to 5, 9, or 13 years.

We have received some complaints that some small corporations and companies are being discriminated against under this bill, that you are giving a more favorable treatment to the individual inventor than you are to some small corporations and companies.

I have a letter here, for example, from a nursery company which says:

At the present time we have 349 active plant patents. In many cases these patents are active in connection with further plant research, but themselves are no longer in commercial production, and as a consequence no direct income is derived therefrom.

Now, as I understand it, this particular company under your maintenance fee system would have to pay those fees on 349 patents whether they were making any money out of them or not, and you couldn't grant them extensions like you do the individual inventor.

Am I correct in stating that?

Mr. LADD. That is correct.

May I reply?

Senator McCLELLAN. And if they have 349 patents—they may not be a little company, but if they have 349 patents, they would have to pay within the 5 years, the first 5-year period after this bill passes, $35,000.

Mr. LADD. They have a substantial outlay for their patent program, there is no question about that.

Senator McCLELLAN. As I understood you awhile ago, they wouldn't have to pay anything on these, these are already granted?

Mr. LADD. That is correct.

Senator McCLELLAN. But if they accumulate 349 more after a 5-year period they would have to pay for those?

Mr. LADD. That is correct.

Senator McCLELLAN. I wonder if you know if that is an unusually large number of patents for one little company to hold.

Mr. LADD. For a little company I would say that is a sizable patent dossier.

Senator McCLELLAN. The fact that these are plant patents, would not that explain the numerical extent of the patents as compared to other patents?

Mr. LADD. The fact that they are plant patents makes the number even more surprising to me.

Senator McCLELLAN. Would they have to pay this maintenance fee on plant patents, too?

Mr. LADD. Yes.

Senator McCLELLAN. Are any patents excluded?

Mr. LADD. No, except design patents, which have varying terms and can be ignored for patent purposes.

Senator McCLELLAN. It covers everything except design patents?

Mr. LADD. We don't discriminate in that respect.

Senator McCLELLAN. I want to be sure I get you correctly on this. You can extend the time of payment of maintenance fees by individuals, but not by companies and corporations?

Mr. LADD. That is correct.

Senator McCLELLAN. One other question. What are the present application fees now?

Mr. LADD. The filing fee is $30, plus $1 for every claim over 20.

Senator McCLELLAN. $1 for every claim over 20?

Mr. LADD. Over 20.

Senator McCLELLAN. What is the issuance fee now?

Mr. LADD. The same.

Senator McCLELLAN. $30?

Mr. LADD. Yes.

Senator MCCLELLAN. And you propose to raise that to $40?

Mr. LADD. That is correct, plus these charges for claims.

Senator MCCLELLAN. Sir?

Mr. LADD. Plus these charges for claims.

Senator MCCLELLAN. Why couldn't you raise it to $50, and that would take up some of the slack? It doesn't seem to me like $100 is too much for a patent.

Mr. LADD. Precisely to avoid imposing heavy charges early, and allowing the small inventor, if you will, or anybody else, to file his application at a minimum cost, and to allow the principal burden of this fee schedule to fall at a time when the patentees are enabled to determine whether the patents has merit.

Senator MCCLELLAN. In other words, you don't want to discourage people from filing?

Mr. LADD. Not at all, we do not.

Senator MCCLELLAN. You want to encourage them, and therefore you do not want to place a heavy burden or a deterrent right in their face at the time they contemplate trying to secure a patent?

Mr. LADD. That is correct. Alternative proposals have been made to impose filing fees of $100 or more and final fees of $300 or more. And we feel that it is better to allow these fees to fall at a later time in the life of a patent when the patentee can decide whether or not he really is going to get a commercial return.

Senator MCCLELLAN. You mean after it has been established whether it is profitable, whether the invention is profitable?

Mr. LADD. That is correct.

Senator MCCLELLAN. You feel it is better to have the maintenance provision as a method of securing revenue than to have a fee for the issuance of the patent, a larger fee?

Mr. LADD. Yes

Senator MCCLELLAN. I was just trying to rationalize this situation.

Mr. LADD. You grasp the rationale of the bill exactly, sir.

Senator MCCLELLAN. Counsel?

Mr. DINKINS. Mr. Ladd, we have a letter referring to some testimony you gave before the House Committee on the Judiciary last April, and there is one point about which I would like to have your statement. The letter states:

> In discussing large applications in his statement before the House Committee on the Judiciary on April 19, 1962, the Commissioner of Patents referred to patents Nos. 1,817,451 and 2,975,957. Under the new fee bill, the fees for prosecuting the applications from which these patents matured are estimated to be $11,910 and $7,834, respectively, due to the large number of independent claimants.

Would you care to comment on that, sir?

Mr. LADD. I have not made the computation, sir. I would like to do it. It is not surprising that those patents were chosen from the testimony, of course, because they are extreme cases.

What we are trying to do is to take care of the differences in size between the extremely small applications and the extremely large applications. We have one application which was issued in the Patent Office which is approximately that high [indicating], and which weighs approximately 4½ pounds. I dare say that the cost for legal services which went into the preparation of that application—and I have heard informally that it was 2½ man-years—would represent an investment of substantially more than $11,000.

Patent 2,925,957 which was referred to by the writer, would not have cost $7,834. It comprised 354 sheets of drawings, 216 pages of printed specifications, 132 independent claims and 111 dependent claims, thus the total prosecution charges would be $4,722 under this bill. This breaks down to $2,908 for issuing the patent and $1,774 for excessive and independent claims. I do not know what patent 1,817,-451 would have cost but it had over 900 claims which seems rather excessive.

Senator McCLELLAN. Is there anything further?

(No response.)

Senator McCLELLAN. Thank you, Mr. Commissioner. I want to thank all of you for your presence and cooperation.

(The prepared statement of David L. Ladd, Commissioner of Patents, follows:)

STATEMENT OF DAVID L. LADD, COMMISSIONER OF PATENTS, BEFORE THE SUBCOMMITTEE ON PATENTS, TRADEMARKS, AND COPYRIGHTS OF THE COMMITTEE ON THE JUDICIARY, U.S. SENATE, RELATING TO A REVISION OF S. 2225, A BILL TO FIX THE FEES PAYABLE TO THE PATENT OFFICE, AND FOR OTHER PURPOSES, SEPTEMBER 4, 1962

I. INTRODUCTION

Mr. Chairman and members of the subcommittee, 30 years have passed since the last significant increase in patent fees. Meanwhile, the cost of operating the Patent Office has moved steadily upward with the steadily mounting deficits being made up by the Treasury of the United States.

We believe that the fees payable to the Patent Office should be raised, not next year, not in 1964, but now.

The question of the adequacy or inadequacy of Patent Office fees arises not only when a specific bill is under consideration, but is a subject of continual discussion among persons interested in the patent system. Members of the Senate and House Appropriations Committees have repeatedly shown concern about the relationship between our fees and our expenses. Thus, in 1961, as in most years, fees were discussed in some detail; and during the discussion, Congressman Gary, of Virginia, commented:

"I do not know how the citizens of this country expect the Government to pay increased costs and not increase their charges. Apparently there is very little complaint when private business increases its charges to cover increased costs, but the minute you suggest increased charges to take care of increased costs in providing Government service, a howl goes up from all quarters. I suppose it is just a part of the philosophy that is developing now that the Government should take care of the people rather than the people take care of the Government. I think it is a very dangerous philosophy, myself."

Members of the Senate have likewise expressed their concern. In fact, the revised bill we are now presenting and our arguments on its behalf respond to studies recommended in the report made by this subcommittee (S. Rept. 1481, May 9, 1962) pursuant to Senate Resolution 55 (87th Cong.).

No one likes to pay increased fees any more than higher taxes. They are never greeted with enthusiasm, and they are accepted only when there is a compelling need. It gives me no great satisfaction to advocate higher fees. Yet, I agree with the Bureau of the Budget that it would be irresponsible for us not to suggest ways to offset the greatly increased costs of Patent Office operations.

The revised version of S. 2225 (H.R.7731) was transmitted to the President of the Senate and the Speaker of the House of Representatives by the Department of Commerce on March 22, 1962. It was introduced in the House as H.R. 10966 but I shall hereafter refer to it as the revised bill, or simply as the bill. It is designed, like its predecessor, to recover about 75 percent of our budgeted expenditures, but the incidence of the fees has been rearranged to encourage more efficient and economical practice before the Patent Office. Especially in this respect, the revised bill is different from those which have been introduced in the past.

The bill has six goals:

1. To provide a more reasonable cost recovery;
2. To include economic incentives to efficient and economical examination of patent applications;
3. To defer the payment of the maintenance fees to a time when the patent owner is in a better position to judge the value of his patent;
4. To reduce the number of unused patents in force;
5. To avoid unduly discouraging the filing of new applications; and
6. To decrease the time during which an application is pending in the Patent Office.

Any fee bill assumes a concern for income. A fee bill must provide an amount of money which, in the considered judgment of this committee and the Congress, is a reasonable proportion of the operating costs incurred by the Patent Office. As I mentioned earlier, this revised bill is designed to recover, eventually, approximately 75 percent of our currently budgeted operating costs, a figure adopted by this and the previous administration.

The Bureau of the Budget, in consultation with various agencies, has determined that a reasonable part of the cost of Government services should be recovered whenever their recipients receive a special benefit from those services, and that the principle should apply to patent owners inasmuch as they receive such a benefit. I am wholly in accord with its judgment and with the user charge concept it espouses. The reasonableness of the 75 percent recovery figure is reinforced by the fact that, historically, our Patent Office and those of most foreign countries have been substantially self-supporting. Only during the last 20 years has our income materially failed to cover our operating costs. Furthermore, the gap is widening each year.

Congress has been responsive to the needs of the Patent Office. Starting in fiscal 1956, for example, we have been permitted to increase the examining force substantially to reduce our backlog. This buildup in the size of our examining corps, it was believed, would permit us to eliminate the backlog. It was proposed that after the Office had reduced the workload to a normal one, the examining corps would be allowed to decline in size by virtue of our heavy turnover. While there has been a substantial reduction in the backlog, it is now clear that this rapid buildup in personnel did not fulfill all of its goals. It is still relevant, however, for its emphasizes that we received sympathetic treatment from the Congress.

Not only does the number of patent applications filed each year increase, but the disposal rates of examiners have continued to drop in accordance with a long-established trend. This is due largely to the increased complexity of the subject matter to be examined and the increased complexity and increased quantity of the prior art that must be searched.

These and other reasons for the present difficulties of the Patent Office were explained in detail this year to the subcommittee of the Senate Committee on Appropriations which examines our budget requests. A copy of our statement which was submitted to Senator Holland's committee has been supplied to your staff.

These problems have created a crisis in our examining system. We are attacking the overall problem on several fronts: research and development in information retrieval, reorganization of the administrative apparatus of the Office, including establishment of a planning and program evaluation group to check performance and evaluate substantive changes in the field of patent law, improvement of the physical facilities of the Office, and revision of our personnel and promotion policies. We have also adopted, as a quasi-emergency step, a policy of expediting action on older cases in the Office. The overall result is that, in fiscal 1962, we not only checked the rise in our backlog, despite the fact that more applications were filed than we anticipated, but reduced it by some 4,000 cases. More recently, we have undertaken to implement many of the recommendations of the management survey, which was completed in April of this year and with which this subcommittee is familiar.

In short, we are attacking this problem on a number of fronts, but it appears clear to us that we will continue to need substantial budgets. It is no longer a case of asking Congress to be generous temporarily. These heavy and growing burdens on the Patent Office are a natural result of the revolution in research and development in both the Government and private industry since the war. We know now that the greatly increased expenditures for research and development are not merely temporary. We know that burdens on the Office will continue to grow. The solutions we are seeking will therefore require addi-

tional money. The present bill is no panacea, but it will alleviate or reduce the outflow from the Federal Treasury as we work toward the solution of our problems.

This bill does more, however, than merely increase income. Equally important, it provides incentives to better practices before the Patent Office which will result in more efficient examination of patent applications. Most fee bills have been designed to increase income, little consideration being given to a fee structure that influences the conduct of the examination process. One of the basic purposes of this bill is to use fees to encourage applicants and attorneys to follow what are believed to be orderly and efficient practices. This is the reason behind the substitution of this bill for S. 2225.

The estimated total revenue from the fees of each bill is comparable, but the incentive features we have built into this revised bill will improve practice and more reasonably relate the cost of examining a given case to the fees collected.

The third enumerated objective is to defer payment of the maintenance fees, which will eventually represent about 25 percent of all Patent Office income, to a time when the patent owner is in a better position to determine the value to him of his patent. The first maintenance fee would become payable before the end of the fifth year of the life of the patent. At that point, the patent owner can evaluate his patent, determine what, if anything, his patent has earned, and decide whether it is worth paying the fee to keep his patent in effect. For any patent of value, this first maintenance fee of $100 must be considered nominal. Inventors who still own their patents may defer the first fee (and the second) if they have not realized anything from their patents.

The fourth objective is an ancillary benefit stemming from the use of maintenance fees. Patents that are not being exploited and have no reasonable prospects of being used should be discarded at the earliest possible time so that the so-called "deadwood" does not impede commercially usable innovations. Maintenance fees would encourage patentees to discard patents for which commercial use is not expected.

Moreover, many patent applications are filed as "defensive" applications. Such applications are filed primarily to protect the applicant against possible future charges of infringement should someone else decide to file on the same invention. There is often no initial intention to enforce a defensive patent against others, the purpose of the "defensive" application having been consummated with the publication of the patent. (This phenomenon is discussed in detail in Study No. 2, "The Patent System and the Modern Economy," prepared for your subcommittee.)

The lapse of such patents because of nonpayment of maintenance fees, or renewal fees as they are sometimes called, would also reduce the number of patents that must be considered in infringement investigations and place more of the expenses of the Patent Office on owners who are exploiting their patented inventions commercially and, therefore, benefiting from the patent system. Then too, unless maintenance fees are instituted, the major patent fees will have to be increased steeply. In my judgment, Patent Office fees that are paid to obtain patents should only be high enough to encourage good practice. The balance of our income should be recovered by fees which bear some reasonable relation to the value of the patent to its owner.

This points up the fifth objective of the bill. It will produce the necessary income, yes; but in doing so, it will be a minimum deterrent to the filing of new patent applications. No matter how little fees are raised, it might tend to deter filing of a few applications. Even so, a fee bill should be structured to minimize any such adverse effect on filing, consistent with the income that must be recovered. We believe this bill is consistent with the premise.

The sixth objective—to decrease the time lag between filing of an application and its issuance—is obtained by streamlining the issue procedure. By the changes proposed in this revised bill, we are going to be able to cut 6 to 9 months off the lag between the time the application is filed and the time the patent is issued.

Thus, the present fee bill endeavors to recover a more reasonable part of our costs, to encourage better prosecution before the Office, to fix payments of some fees at more convenient times, to encourage patentees to allow unused patents to lapse, and to decrease the time during which an application is in the Patent Office, all without significantly discouraging the filing of new applications.

In light of the foregoing discussions, it will now be easier to perceive why patentees and patent owners are regarded as special beneficiaries of the patent system. This view is important to understand because of the fact that this bill

was developed with the user-charge concept of the Bureau of the Budget in mind.

This is not at all to deny or minimize the broad general benefit which the patent system and the issuance of patents confers upon the public as a whole—a benefit attested to by the fact that a 17-year monopoly is given to the inventor in return for his contributions. The patent system by its very nature encourages invention and, equally important, encourages early and complete disclosure and investment in the invention to bring its benefits to the public. To restate this classic and almost universally accepted rationale for the patent system does not, however, mean that the public should be expected to give the exclusive grant and pay all the costs of securing the grant. Since the patentee is a special beneficiary, it is not unreasonable to request him to pay the major part of the cost of securing his patent.

II. GENERAL REASONS FOR INCREASING FEES

This bill, broadly speaking, presents this committee with two questions: (1) Does the Congress concur in the view that the Patent Office should again recover a major part of its operating costs, specifically about 75 percent instead of the present recovery of about 30 percent? (2) If the Congress does want us to recover a higher percentage of our operating costs, then the present fee schedule must be changed and the only remaining question is, In what manner shall the new fee schedule be structured?

This revised bill represents a definite point of view on both of these questions. The answers which we have submitted for your approval are that (1) the Patent Office should once more recover the major portion of its costs, and (2) certain of the fees through which costs are recovered should be distributed in a manner designed to improve the examining procedures and to further the high purposes of the patent system.

I believe that it will be helpful if I deal with these two questions separately. Therefore I will turn immediately to a discussion of the disparity between our operating expenses and our income. Thereafter, I shall turn to the manner in which we propose to change the fees to close this gap and, at the same time, to encourage better practice before the Patent Office.

Historically, the income from patent and trademark fees and services have covered our operating costs. Only in the last 20-odd years has there occurred an increasing divergence between income and operating costs. Figure 1 graphically illustrates the fact that our operating costs have risen sharply, particularly in the last 15 years. Our income has fallen behind our expenses at an increasing rate. When the last major fee change was instituted in 1932, it was to reestablish the balance between income and operating costs that had permitted our operation through the years to be substantially self-supporting.

This problem is not unique to the U.S. Patent Office. Patent operating costs have increased drastically in many other countries. For example, figure 2 compares operating cost increases for a number of countries, including the United States, using the average for 1930–39 as a base of 100. Using this base, our operating costs today are approximately 500, while those of Germany, Switzerland, Great Britain, the Netherlands, and Canada are over 300, 500, 550, 800, and 1,100, respectively. And that is not the end of the story.

Figure 3 gives an idea of the average cost recovery for a number of countries, including the United States, during the period 1957–60. A number of countries show surpluses. Although a number of others did not break even, they were far closer to break-even points than was the United States. We continue to have the lowest recovery ratio of any of the countries for which we could find financial data. In 1961, for example, our fees recovered approximately 32 percent of our operating costs, whereas in 1932 the percentage was 81 percent, even before legislation of that year again assured an income comparable to operating expenses—a relationship that continued for a few years.

Figure 4 illustrates the percentage of cost recovery for these countries and the United States for the averaged period 1930–39 and the years 1950 through 1960.

Whatever can be said about the specific amount the present fee bill will bring in, some substantial adjustment in income to the Patent Office for services rendered to applicants and patentees is long overdue. There is far too great a difference between our present cost recovery figures and those following the last major legislation in 1932, judged against our own history and against the experience of other industrialized countries as well.

The estimated income from this bill assumes full application of the fee schedule proposed therein (see table 1); but the full income from the revisions cannot be realized until 13 years have elapsed from enactment—primarily because the maintenance fees proposed in the bill would apply only prospectively to patents issued after the effective date of the legislation. Thus, initially, the recovery would amount to no more than 55 percent of our budgeted operating costs for fiscal 1963.

Quite aside from the question of whether our income from services and examination activities should cover all of our operating costs, it is revealing to look to the changes in the 1932 fee structure necessary to provide a comparable situation today. Taking into account only what is commonly called the decreased purchasing power of the dollar, the 1932 filing and final fees, which totaled $60, would have to be raised to $131 in 1962. This is illustrated by figure 5. Beyond this adjustment, this revised bill would require only an additional $13 for an average-size patent (not counting the maintenance fees) and in over half of the cases no additional amount at all. In short, a substantial part of this bill represents what we can call a cost-of-living adjustment of 1932 fees, not new burdens.

The reasons for the large increases in the Patent Office budget since 1932 follow the pattern of Government services in general. For the most part the increases represent simple, relentless increases in the basic expenses of our operation. For example, the principal components of our budget are employee compensation and benefits and printing costs. Taken together, these expenses represent over 95 percent of our budget today, they represented over 95 percent of our budget in 1932, and they represented over 95 percent of our budget in 1940. In 1940, when the growing disparity between income and expenses began, the average salary for Patent Office employees was $2,600 per annum. Today the average of salary and benefits amounts to $8,100—$7,500 salary, and $600 benefits—three times as much. (See tables 2 and 3.)

In 1940 the rate per page for printing patent specifications was $4.41. At the time of the hearing in the House on the companion to this bill (H.R. 10966), it was $14.75, today it is even higher—all in all practically four times the 1940 amount. To print the patent specifications and drawings, and to publish the issuance in the Official Gazette, the average patent of today costs about $63. At 1940 prices the cost would be about $19. The present cost, therefore, is more than three times what it was in 1940. (Incidentally, all our printing is required by law to be done at the Government Printing Office and the cost of this appears in our budget.)

If we look to other Government fees, we see that those costs have also risen (table 5). Not so the major patent fees. They have remained pegged to the 1932 level. This has naturally and inexorably caused us to recover less and less of our operating costs.

Also illustrative of the marked change that three decades have wrought in costs is the increase in minimum fee schedules for typical legal services. We see in table 4—Wisconsin is used as an example—that, whereas the minimum fee for drafting a simple contract in 1928 (just before the depression) was $5, it is now $15. The minimum fee for organizing a simple corporation was $75 in 1928; it is now $250. It is unnecessary to expound on this at length. The increase in the cost of legal services, and of all other services, reflects a drastically changed economy—a fact of which we are all aware.

Further evidence of increased charges to cover increased costs, particularly relevant to the Patent Office, is provided by estimates of charges made by patent lawyers for various patent services in 1937 as compared to those made in 1959. The total cost of obtaining a patent is also indicative of the relative burden of patent fees in the scheme of things. Table 6 gives some figures taken from different editions of a widely used book, "Inventions and Their Management," by Berle and de Camp. In the last column of table 6, we have revised the figures and updated them to 1961 on the basis of informal discussions with patent lawyers throughout the country. These revisions have been corroborated to some extent by data provided us by National Aeronautics and Space Administration, which received bids from three patent law firms in California for the preparation of patent applications (table 19).

The data provided in table 6 can be supplemented, perhaps, by witnesses who may appear at these hearings on behalf of the bar associations. I am sure that they can, at least of their own personal knowledge, give the committee additional information about legal expenses connected with patents.

Table 6 shows that most costs connected with patent prosecution and litigation at least doubled between the mid-1930's and 1960. As a result, Patent Office

fees now constitute only approximately 9 percent of the total costs to a patent applicant. And most patent attorneys will tell you that there are few minimum cost applications. Surely, there is no reason why Patent Office fees should not undergo a change at least proportional to the changes that have occurred in the cost of legal services connected with patent procurement. We must remember that the vast majority of the applicants filed in 1961 were prepared and filed by attorneys. Even with the increase in filing and issue fees proposed by this bill, the total fees would normally amount to less than 20 percent of the cost to an applicant in obtaining a patent on a simple invention (see figure 6, for a comparison).

III. SUMMARY OF PROVISIONS OF THE BILL

I shall not summarize the various provisions of the bill, commenting briefly on the underlying objectives of these provisions and the increased income anticipated. These objectives will be considered in detail later.

Table 7 is a compilation of the more important Patent Office fees, indicating when they were instituted and also the amount of the fees that preceded them. Figure 7 illustrates the income differences between the major fees presently required and those called for by the bill. In summarizing the provisions, it may be helpful to refer to appendix C–1, which is an explanation of the examining process and includes a schematic diagram showing the incidence of the fees.

Section 1, patent fees

Section 1 of the bill makes changes in various fees now payable to the Patent Office.

The two basic fees in patent cases are a filing fee payable when an application for patent is filed and an issue fee payable for the issuance of a patent. Each of these fees is now $30 (with an additional fee of $1 for each claim in excess of 20, the effect of which is negligible). Together, the filing and issue fees account for approximately 50 percent of the present income of the Patent Office.

Item 1 of section 1 proposes to raise the filing fee from $30 to $40 with a further payment of $10 for each independent claim in excess of 1 and $2 for each claim, independent or dependent, in excess of 10. (The difference between independent and dependent claims, and why the latter should be encouraged, will be apparent when we have considered figure 14.) It is estimated that this revision will approximately double the income from filing fees for original and reissue applications. (See table 1.)

Item 2 of section 1 would raise the required to issue or reissue a patent from $30 to $40, with an additional charge of $10 for each page of specification as printed and $2 for each sheet of drawing. It is estimated that this change will more than double the income from the issue or final fee. (See figure 7.)

It will be noted that item 2 of section 1 covers both original and reissue cases. The reason that reissue cases are also covered will be understood where we have discussed item 4 of section 1.

Item 3 of section 1 covers design cases and would require a filing fee of $20 and an issue fee of $10 (patent life of 3½ years), $20 (7-year life), or $30 (14-year life). At present, the fee in design cases is simply a filing fee of $10, $15, or $30, depending upon the desired term of the patent, so that an applicant usually files for a 3½-year term and, upon allowance of his design application, requests that the term be increased to 7 or 14 years, paying the balance of the fees. This practice is burdensome to both the Patent Office and the applicant and is a principal reason for the proposed change in design fees. The increased income anticipated under this change would be less than $90,000 a year, but it is estimated that the change will reduce to a reasonable extent some of the burdens of the Office and, for that matter, on the applicant himself.

Item 4 of section 1 changes the filing fee for reissue cases. At present, the fee for reissue cases is merely a flat charge of $30 for filing the application. Item 4 calls for a filing fee of $40, plus $10 for each independent claim which is in excess of the number of independent claims of the original patent and $2 for each claim, independent or dependent, which is in excess of 10 and also in excess of the number of claims of the original patent. The additional income that will result from the proposed change in fees for reissue cases is slight, for there are only about 200 reissue applications filed each year. But, the revision will establish uniform treatment for all patent applications, whether original or reissue.

Currently there is no fee for issuing a reissue patent. Yet it costs as much to print a reissue patent as it does an original patent, and certainly the cost of examining such applications, although it starts from where the previous application left off, usually is substantial. It is therefore not unreasonable to require that reissue applicants pay the same fees that new applicants pay.

Item 6 of section 1 changes the fee on appeal to the Board of Appeals from $25 to $50, if the Board consideres the appeal solely on appellant's brief, and to $100 if an oral hearing is requested. It is provided, however, that if the appeal is withdrawn prior to any substantive consideration by the Board, the net cost to the appellant is $25, the rest of the appeal fee being refunded to him.

Here, the purpose is twofold: (1) to increase the appeal fee so that it is more nearly commensurate with the expense involved, and (2) to encourage submissions on briefs or, at least at a minimum, make a charge for oral hearings, rather than burden those who are willing to submit their appeals on written briefs.

Beyond this, we want to encourage intended withdrawals at the earliest possible time. Approximately 60 percent of the appeals filed do not proceed to hearing or decision; as to these, there would be no change in the appeal fee. Of those decided, in only 30 percent is the examiner reversed in whole or in part.

In many cases, after the brief is filed, the case is reconsidered by the examiner, the claims allowed and the appeal withdrawn. In other cases, the appellant may lose interest in the invention and abandon efforts to get his patent. In either event, the proposed appeal fee will encourage appellants to resolve the issue and withdraw the appeal at an early time. This should have a salutary effect on the backlog of the Board of Appeals.

Item 10 of section 1 pertains to the recording of assignments. At present a basic charge of approximately $3, with small surcharges for size and additional items, is made to record an assignment, even when a number of applications, registrations, or patents are assigned by one instrument. The combined charges average about $3.20. Item 10 of section 1 of the bill proposes a charge of $20 for each item recorded. The substantial increase in income to the Patent Office that would result from this charge is illustrated in figure 7. One of the principal purposes in raising the fee for recording an assignment is to place more of the burden for Patent Office operations on those applications, patents and registrations which have proved to be valuable. Presumably, there would be no traffic in patents, applications, and registrations which are valueless. Conversely, if anyone goes to the trouble to arrange an assignment of any one of these, it must have some value.

Items 5, 7 and 8 deal with procedures of relatively infrequent occurrence and the income from them is small. They have been changed, however, to keep them in line with the other provisions of the bill. The reference in item 8 to certificates under section 256 of title 35 is new and to this extent a minor new fee has been added.

The sale of copies of patents at 25 cents per copy accounts for a large fraction of Patent Office income—at present about 20 percent of the total. No change in this fee is proposed, but item 9 of section 1 adds a provision giving the Commissioner authority to raise the charge to not more than $1 in the case of patents above a certain size and for plant patents printed in color.

Sections 2 and 10, fees to be paid by Government agencies

Section 2 of the bill provides that patent fees shall apply to Government agencies. They are thus to pay the same fees as anybody else, except that fees for incidental or occasional requests may be waived. Section 10 makes a coordinating change.

Objections may be raised to this provision on the ground that it is purely a bookkeeping operation and should not be required. To this, there are several answers. For one thing, it would seem desirable to keep a record of how deeply other Government agencies are involved in the patent procurement business. It would be useful to know the amount of money spent by these agencies for patent procurement and administration. This information would be helpful, for example, in any evaluation of Government patent policy.

We are not exempt from making payments to other agencies of the Federal Government. Most notably, we paid the Government Printing Office nearly $3 million in 1961 for printing patent specifications and various publications such as the Official Gazette. If interagency transfers are simply bookkeeping entries, this should not have been necessary. However, I think it is a good thing. It causes us to keep our printing costs in mind and look for ways to simplify, reduce patent size, and the like. In general, it acts as a break on the total out-

lay for the Patent Office operation and is, therefore, I believe, salutary in effect.

It does not seem unreasonable to allow the Patent Office to receive income from other Government agencies that file and prosecute patent applications. The applications filed by these agencies take up examining time and require other patent service functions just as do those filed by individuals and companies.

Table 1 (at footnote 1) points out that we would realize approximately $300,000, based on the current volume of business, from fees paid by Government agencies if the bill is enacted. In view of the increasing commitments of the Government in research and development programs, its patent activity is bound to increase.

I believe the other agencies should pay for our services, and a number of Government agencies, including the Bureau of the Budget, agree with this view. Any Government agency should be made to think twice before ordering many copies of many different documents. People tend to treat costs more respectfully when they come out of their own budget. It is good business to put some restraint on practices like ordering 7,882 copies of patents with a sale value of $1,970.50 which required 2 man-weeks to fill, and then notifying the Patent Office that the copies were not wanted after all. This is not an isolated case.

Moreover, we have referred to what we call the incentive aspects of the bill to promote more efficient prosecution before the Office. There is no reason to believe that this incentive would be any less effective on practitioners representing Government agencies in soliciting patents than on those representing private clients.

As a matter of fact, the similar sections in the previous bill, H.R. 7731 (companion of S. 2225) were presented in response to sentiment expressed by members of the House Judiciary Committee. During an earlier hearing in 1955, on H.R. 4893, a bill which required Government agencies to pay only certain fees and not all the major ones, it was that committee's suggestion that Government agencies should pay the same fees required of anyone else. The committee reported a substitute bill, H.R. 7416 (H. Rept. 1201, 84th Cong.), which required Government agencies to pay all fees, including filing and issue fees.

There is another compelling reason for this provision. The Patent Office goes before the Appropriations Subcommittees each year and is required to make a showing of how its income stacks up against its operating costs. Part of our deficiencies arise because Government agencies do not have to pay fees. If we can receive reimbursement for expenses charged against the Patent Office because of demands of other Government agencies, as we must pay them for the services they render to the Patent Office, financial responsibilty will be fixed and encouraged; and accountability to the Congress will be much easier for all.

Section 3, trademark fees

Section 3 of the bill makes various changes in the fees required in trademark cases. There are three major changes and a few minor ones. First, the fee for filing an application to register a mark is proposed to be raised from $25 to $35; second, a fee of $10 is made payable at the time an affidavit of use is filed (at the end of 5 years); and third, the fee for recording an assignment of a trademark registration is increased to $20 to be consistent with that for recording patent assignments.

For the first time, a fee is made payable on the filing of a petition to revive an abandoned trademark application. And, the fee for surrendering a registration has been dropped.

Section 4, payment of issue fee

This section of the bill proposes a different procedure for paying the patent issue fee. At present a notice of allowance is sent to the applicant. There then is a 6-month period within which the final fee must be paid, and thereafter the patent normally issues within 7 weeks. (There is also a provision for the delayed payment of the issue fee up to 1 year.)

It is proposed that once the notice of allowance has been mailed to the applicant, the Patent Office will proceed to issue the patent in due course, which will still take a few weeks because of checking, typesetting, and printing time. Following the notice of allowance, a reasonable period will be provided (in the Patent Office Rules of Practice) during which an applicant may, for example, file a continuation or division application or file for a patent in a foreign country. After this period has expired the patent will be processed for issue. Within 3 months after issue, the issue fee must be paid.

However, section 4 will permit the Commissioner of Patents to require a deposit to be applied against the issue fee before issuing the patent. This provision will give sufficient flexibility to the Commissioner so that in the case of

particularly large applications, the heavy cost of printing will not be incurred without good likelihood that the fees will be paid.

Two reasons lie behind this particular method of paying the issue fee. First, it will allow the Patent Office to issue patents substantially sooner; in fact, the waiting period of 6 months for paying the final fee effectively vanishes. This decrease in the period of pendency will permit us, without anything more, to get new technology to the public at an earlier date. Second, because the patent is printed before the issue fee is due, the applicant can easily calculate the issue fee before its due date.

If the fee were to be paid after the notice of allowance was sent out, but before the patent issued, it would be necessary to make a rough page count of the application and an estimate of how many printed pages are involved. Since applications may have many interlineations and other additions and deletions during the course of prosecution, it might be quite time consuming to attempt to make such an estimate. It might also be inaccurate in the final analysis. But, by waiting until after the patent issues, and basing the charge on the number of sheets of drawings and pages of specifications as printed, it permits the applicant to make an exact determination of the amount of the final fee and submit it within 3 months of the issue date.

Sections 5–8, maintenance fees

Sections 5 through 8 of the bill introduce maintenance fees in patent cases. Section 8 specifies that to keep a patent in force after it issues, fees of $100, $200, and $300 are to be paid on or before the 5th, 9th, and the 13th anniversaries of the issue date, respectively. The successive payment of these fees is required to maintain the patent in force. Failure to pay any of them would result in the lapse of the patent. Section 8 also provides for a delayed payment fee of $25.

Let me make a few comments on maintenance fees.

First, a grace period of 6 months is provided in which to pay the maintenance fees as they become due. This is to save the patentee if he misses the anniversary date for some reason. The grace period provision also satisfies our obligation under the International Convention for the Protection of Industrial Property.

Section 6 of the bill permits deferment of the first or second maintenance fees (or both of them) by an inventor who still owns his patent and has not, prior to the date the fee is due, received value from the patent at least equal to the amount of the fee. For example, at the end of the fifth year, if the inventor still owns his patent, and has not made money, or received equivalent value from or under the patent at least equal to the $100 fee required, he can file an affidavit to this effect and the payment will be deferred until the second maintenance fee is due.

At the end of the ninth year, if the inventor has not made at least the $200 then due or received such value, he can request a deferment of the second fee by affidavit; a second deferment of the first fee can also be requested.

At the time the third maintenance fee is due at the end of the 13th year, however, even though the inventor has not realized anything on his invention, the patent will lapse unless the fees then due are paid. This means an inventor-owner can maintain his patent in force for 13 years without any payment of maintenance fees, unless and until he has successfully exploited his invention at least to a point where the benefits therefrom are equal to the amount of the first or second maintenance fees.

In the case of maintenance fees and assignments, there is here an effort to place part of the burden of running the patent operation on those patents which prove successful at least to some extent.

The basic provision for maintenance fees is in section 6 of the bill; section 8 specifies the amount of the fees; and sections 5 and 7 make incidental amendments.

Section 9, time of coming into force

Section 9 specifies the effective date of the act and also the applicability of various of its provisions to certain special situations.

Thus, maintenance fees are not required for any application (or patent) in which the notice of allowance was sent prior to the effective date of the act.

The new patent issue fee and the issuance procedure apply only to cases in which the notice of allowance was sent after the effective date of the act.

The new trademark affidavit fee applies only to registrations issued after the effective date of the act and to certain old registrations for which affidavits are required after the act goes into effect.

IV. OBJECTIVES OF THE BILL

A. INCOME RESULTS OF THE BILL

Figures 8, 9 and 10 may be helpful as background material and I shall briefly describe them at this point. The income from the major fees presently in force is pictorially broken down in figure 8. Figure 9 is a bar graph indicating the distribution of operating costs among the three major functions of the Patent Office. We can see in figure 9 that patent examination and adjudication functions account for approximately 77.1 percent of our operating costs, the trademark examination and adjudication function for approximately 4.1 percent, and the miscellaneous costs under administration and program services for approximately 18.8 percent.

Figure 10 compares the cumulative fee income of selected foreign countries with that of the United States, both under the present U.S. fee schedule and under the provisions of the bill.

The anticipated income under this bill is based on estimates for fiscal 1962. (See table 1 which compares Patent Office income under the present fee schedule with that anticipated under the provisions of the bill.) The estimated income for fiscal 1962 under the present schedule of fees is $7.7 million (our actual income for fiscal 1962 exceeded this by approximately $493,000, due primarily to a higher rate of receipts and disposals). This figure is 31 percent of the budgeted operating costs for 1962, and even a smaller percentage of the budgeted operating costs for fiscal 1963.

It should be noted that no income from maintenance fees would be received until at least 5 years from the effective date of enactment and that 13 years would have to elapse before maintenance fees could become maximally operative. Moreover, the trademark affidavit fee would not be applicable until at least 5 years from the effective date of enactment. If we exclude these fees from the bill, the anticipated income would be $15 million, which is approximately 60 percent of the budgeted operating costs for fiscal 1962 and less than 55 percent of those for fiscal 1963. However, if all the fees were in full effect, the anticipated revenue would be $20,984,000, which amounts to approximately 75 percent of the budget submitted to Congress for fiscal 1963.

B. HOW THE REVISED BILL ACHIEVES ITS OTHER OBJECTIVES

I would like to turn now to some of the conditions—other than our low cost recovery which I have already discussed—which I feel can be improved by the proposed bill. They are, in the order in which I shall discuss them:

1. The absence of a relation between the size and complexity of a given application and the fees involved;
2. The lack of incentives to encourage better practice before the Patent Office;
3. The delay in issuing patents; and
4. The accumulation of unexpired patents that are never used or whose disclosures are commercially obsolete.

1. The absence of a relation between size and complexity and the fees involved

Item 2 of section 1 of the bill is directed to this condition. It calls for a charge of $2 for each sheet of drawing and $10 for each printed page of specification, thereby making the issue fee somewhat proportional to the size of the application. There is nothing startling about this proposal nor the condition it seeks to rationalize.

Simple fairness suggests that there should be a substantial difference between the charge on patents exemplified by No. 1,817,451 and on patents exemplified by No. 1,826,026. The former includes 40 sheets of drawings and 99 pages of printed specification, while the latter consists of 1 drawing and 1 printed page of specification. Nonetheless, even in 1932, the basic filing and final fees assessed for both were the same.

The situation is no better in the 1960's. Patent No. 2,925,957 (which includes 354 sheets of drawing and 216 pages of printed specifications) was obtained for the same filing and final fees totaling $60 that were required for patent No. 2,955,299 (which consists of 1 sheet of drawing and 1 page of specification).

Admittedly, in both comparisons, charges were made in the larger cases for claims over 20; but the fees for the smaller and larger cases are still comparable even when that is taken into account.

Here, we are concerned not with how much money we should receive from patent fees, but where the money ought to come from. I think everyone would agree that there was a marked difference in the time required to examine the

patents I have cited. Patents 1,817,451 and 2,925,957 are what are commonly referred to as "jumbo" patents. They required large amounts of time on the part of the examiner, particularly when contrasted with the time required to act on patents 1,826,026 and 2,955,299. Even if it is assumed that the large patents contribute far more to the storehouse of technical knowledge—an assumption of doubtful validity—there is no reason why inventors, whose inventions are described in short applications, should be required to pay a large share of the cost of examining and issuing the "jumbo" patents. Many pioneer patents—for example, 821,393 (flying machine), 879,532 (triode vacuum tube), 2,524,035 (transistor)—involved relatively short patent disclosures.

Figure 11 compares disposal rates for the average examiner who examines subject matter of different degrees of complexity. Those divisions that handle more complex subject matter have average disposal rates substantially below those that handle ordinary or simple inventions. And the complex application divisions even have disposal rates substantially below the overall average for the Office, whereas those handling simpler subject matter are well above the overall average.

Figure 12 illustrates this another way. It shows the relationship—or more precisely, the lack of relationship—between the number of claims and number of sheets of drawings and pages of specification, based on a sample of U.S. patents issued in 1961. With respect to this sample, though table 11 shows that the overall average number of sheets of drawing is 2.0, the average number of pages of printed specification is 3.7, and the average total number of claims is 6.7, it is shown that the overall averages cover a wide range. If there were perfect correlation, all the lines connecting the number of claims to the average number of sheets of drawings and to the average number of pages of specification would be parallel. In our judgment, it is not fair to these applicants on the low end of the range to have to pay the freight for those on the high side. It is our hope that this condition will be, in part, corrected by the structure of the present fee bill.

Not only does the uniformity of the present fees unnecessarily assess the applicant who files a short and succinct disclosure, but it provides no economic incentive to the good practitioner. We want to encourage applicants and attorneys who file good applications and in some way discourage those who employ unnecessary drawings, redundant and excessive descriptions, and unreasonable permutations and combinations of claims.

We believe that the discrepancy between the size and complexity of inventions, on the one hand, and the fee involved on the other, needs correction. A more reasonable relationship should be established between these factors, and this is what item 2 of section 1 of the bill is designed to do.

2. The lack of incentives to encourage better practice before the Patent Office

(*a*). *Claim obscurity and prolixity.*—As I mentioned earlier, item 1 of section 1 of the bill calls for a charge of $10 for each independent claim in excess of 1 and a charge of $2 for each claim, independent or dependent, in excess of 10. Item 1 of section 1 of the bill has provisions that will do much to discourage the unreasonably multiplied permutations and combinations of claims filed by some applicants and to encourage the dependent form of claim.

The need to check the unnecessary multiplicity of claims contained in patent applications has been long acknowledged. In 1924, a Committee on Patent Office Procedure was formed by the Secretary of the Interior (the Patent Office was then a bureau of the Department of the Interior) by inviting several Patent Law Associations, the Chamber of Commerce of the United States, the National Association of Manufacturers and the American Engineering Council to nominate representatives to serve on the Committee. As would be expected, the membership of the Committee was distinguished.

The Committee filed its report with the Honorable Herbert Hoover, then Secretary of Commerce, on April 15, 1926. (The Patent Office had by that time been transferred to the Department of Commerce.) Among the observations and recommendations of the Committee was the following:

"The work of the Patent Office is enormously and unnecessarily added to by the multiplicity of claims contained in applications. There is no one change which would be so helpful in the present situation as the placing of a limit upon the number of claims. There are attorneys who make a practice of writing claims by a permutation and combination formula or system. Such a practice is unnecessary and is fearfully wasteful of public money."

I want to emphasize that this observation was made 36 years ago. Later commentators on the patent system and the Patent Office have perceived the same difficulty. For example, Mr. George E. Frost of Chicago in his monograph

"The Patent System and the Modern Economy", which was published as study No. 2 in the series sponsored by your subcommittee, said:

"* * * A broad field for improvement—helpful to the Patent Office, the public, and applicants alike—lies in simplifying and streamlining the preparation and prosecution of patent applications. Excessive numbers of patent claims, for example, extend the time required for the examiner to pass on an application and, if embodied in the issued patent, they unnecessarily complicate the efforts of competitors to evaluate the patent and labors of a court in enforcing it. * * * The solution to the problem * * * lies in giving the Patent Office ample authority to control the number of claims and *in placing a substantial incentive upon the applicant to submit only such claims as are really necessary.*" [Emphasis added.]

Item 1 of section 1 of the bill, by setting different fees for dependent and independent claims, is designed to provide the incentive of which Mr. Frost speaks.

To date, the only effort to impose a fee for claim multiplicity became law in 1927. It invoked a nominal charge of $1 for each claim in excess of 20. However, the regulatory effect of this nominal charge, if such was intended, is not demonstrated by the facts. A study designed to evaluate this effect showed that in the applications surveyed there was no statistically significant decrease in the number of claims over 20.

One phase of an examiner's job is to analyze the differences between claims so that he can ascertain in what areas he should look for anticipatory art. In an effort to measure the time required for an examiner to analyze the differences in scope when the forms of the claims are different, a number of experienced examiners were asked to evaluate a selected number of patents having claims in both independent and dependent form. (The independent form requires no reference to any other claim, while a claim in dependent form incorporates a previous claim by reference and adds some additional elements or limitations.) Figure 13 demonstrates that even in the case of simple patents, the time saved in analyzing the differences between claims is approximately 2:1 in favor of the dependent form of claim.

To make the point more clear, consider patent No. 1,817,451. It includes not only 40 sheets of drawings and 99 pages of printed specifications but over 900 claims. Reflect for a moment on the difficulty faced by an examiner, even if he is experienced, in analyzing the differences between these claims, a job which he must do to perform his examining task properly. There is no reason why prolixity even approaching this magnitude should be allowed. Certainly, it should be discouraged.

One way of reducing the number of claims is simply to require applicants to limit the number of claims which they file. But we submit that restraints through financial incentives will be more effective than a mere power in the Patent Office to restrain prolix claiming. An applicant can always contest a Patent Office rejection of claims for multiplicity. The work imposed on the Office in adjudicating such a contest can be as great as an adjudication on the merits of the claims themselves. The cost incentive that we propose is self-executing and continuing.

Figure 14 is helpful in demonstrating the difference in form between independent and dependent claims and the marked advantage of the dependent form. In this display of the claims for a simple inventive concept, note that the four claims of the patent were written in independent form—a form that makes it difficult to ascertain the differences between them without a careful comparison. Yet claims 1, 2 and 4 differ from claim 3 only in minor ways. Claim 3 is the broadest claim, but the reader is not aware of this in his first scanning. Had the claims been written in the dependent form you see in figure 14—with claim 3, first—the examiner's job clearly would have been easier. He would have been able to tell immediately that the claims differ from one another only slightly.

Multiply this savings in the time to analyze one application by the more than 80,000 applications examined per year, many of which concern much more difficult technology than does the patent illustrated in figure 14, and you will be able to appreciate what this dependent claim form can mean in our efforts to reduce the backlog of pending applications. This bill will encourage the drafting of claims in dependent form to the everlasting appreciation of all those in and out of the Office who must subsequently evaluate them.

As I have noted, the purpose of the proposed fee for claims is to put a premium on limited numbers of claims and on the dependent form, not only for the sake of the Patent Office, in which the examining process will be made easier, but also for the sake of the courts. The courts in a number of instances have com-

mented rather critically on the unreasonable number of obscure claims before them.

Judge Learned Hand, whose opinion was quoted in *Victor Talking Machine Co.* v. *Thomas A. Edison, Inc.*, 229 Fed. 999, 1001 (2d Cir. 1916), said after the trial of the infringement action:

"* * * the courts should discourage * * * practice which permits 48 claims upon a simple and perfectly obvious machine like this. *Such claims violate the very purpose of any claims at all, which is to define the forbidden field.* In such a waste of abstract verbiage it is quite impossible to find any guide. It takes the scholastic ingenuity of a St. Thomas with the patience of a yogi to decipher their meaning, as they stand." [Emphasis added.]

And as to prolixity, Judge Hand remarked:

"* * * amid the wilderness of words I have tried to find and tread a path of logic, though the simpler way might have been to rest the case upon broader lines."

In 1873, Mr. Justice Bradley said in *Carlton* v. *Bokee*, 17 Wall. 463, 472 (U.S. 1873), with respect to ambiguous specifications and nebulous claims:

"Without deciding that a repetition of substantially the same claim in different words will vitiate a patent, we hold that where a specification by ambiguity and a needless multiplication of nebulous claims is calculated to deceive and mislead the public, the patent is void."

The evils of which Judge Hand and Mr. Justice Bradley spoke are still prevalent. For example, Judge Brown in *Thurber Corp.* v. *Fairchild Motor Corp.*, 269 F. 2d 841, 850 (5th Cir. 1959) said:

"There is no question but what the claims are complex and drafted with language and in a style that makes them difficult if not impossible for laymen—and indeed, for most lawyers and judges—to understand. As an example of that with which the jury was confronted, we have set forth in the margin the 334-word sentence which is claim 45 of the * * * patent."

The dependent form of claims is important, not only because it facilitates the examining process in the Patent Office and makes the interpretation by the courts easier should the claims ever be litigated, but also because it helps industry to understand better what is being claimed by others.

The purpose of claims is to define the invention clearly, not to obscure it—for the Patent Office, the public and the courts. And the dependent form of claim sets out in clear relief the differences between claims, a fact which alone would eliminate some lawsuits, since claim ambiguities are often the central issue.

This clarity is especially important when new claims are added late in the prosecution of a patent application. There, unless the examiner can readily grasp the relationship of the new to the older claims in the same case, there is a hazard that limitations upon which the examiner has insisted as a condition of allowance may be omitted and the omission escape his notice.

In a lecture before the Practicing Law Institute in 1956, Mr. Harry R. Mayers, general patent counsel of the General Electric Co., listed the disadvantages of excessive patent claims as (1) the adverse effect upon an examiner's determination of patentability, and (2) the adverse effect upon a court's approach both to the issue of validity and infringement and to the application of the doctrine of equivalents.

Finally, it is appropriate to note the position taken by the Patent Office Society, an organization counting among its members more than 900 examiners, before Subcommittee No. 3 of the House of Representatives during hearings on companion bill H.R. 10966. It made the point in the following language:

"Examiners know from experience that dependent claims take less time to examine than those in independent form. We also know that dependent claims minimize the mental gymnastics necessary to decipher large number of claims which obscure the invention, rather than setting it out clearly for us. An error anywhere in the train of mental gymnastics involves the risk that a claim will be allowed that should not have been allowed.

"We are rightly indignant when claim language is unduly verbose, when claims are unduly multiplied, and when they are written in independent form for no apparent reason other than to equivocate, or even hide, the inventive concept.

"Examiners know, of course, that it takes much longer to examine a jumbo application than it does a simple one. We recognize that some inventions are necessarily complex and their descriptions necessarily long, but many cannot be defended on either ground. The issue fee of H.R. 10966 will place a penalty on unnecessary length.

"H.R. 10966 proposes to change the appeal fees and we applaud the direction taken. We know that it takes a great deal of time to carefully prepare the Patent Office side of the issue before our Board of Appeals, which issue is ordinarily whether we should allow claims so broad that we believe they intrude on the public domain. Examiners believe that an appeal, filed as delaying tactics to keep an application of little merit in 'patent pending' status, should be dis-discouraged.

"Patent examiners know these things because each one of us judges eight or so applications a week, week after week, and year after year. Examiners are in the best position to know what eats up examining time and what kinds of reform will help us do our jobs better.

"Because society members know these problems they commend H.R. 10966 to you. In the vital areas of practice mentioned, it makes an effort to rationalize our examining process. The result will be in the public interest."

(*b*) *Excessive and circumlocutory disclosures.*—I mentioned previously that item 2 of section 1 of the bill would set a charge of $2 for each sheet of drawing and $10 for each printed page of specification. We hope by this measure to limit obfuscating verbiage by encouraging an applicant to consider seriously his inventive concept when he first prepares the application. In far too many applications, the invention is submerged in circumlocution. This not only makes it difficult for the courts when they are called upon to interpret the patent document, but also places an unconscionable burden on the examiners during the prosecution of the application. We want to use the fee structure of this bill to promote adequate, but concise, disclosure, consistent with the requirements of the patent laws.

(*c*) *Appeals.*—Item 6 of section 1 of the bill, as I mentioned earlier, calls for an appeal fee of $100, $50 of which would be refunded if an oral hearing is not requested prior to consideration by the Board. In the event the appeal is withdrawn prior to any substantive consideration by the Board, then the cost to the appellant would be only $25, the rest of the appeal fee being refunded to him.

The Board of Appeals receives for its consideration over 4,000 cases each year and its backlog is high. Another 6,000 appeals are filed annually, but withdrawn before consideration by the Board. One thing which contributes to the Board's problems is the fact that so many oral hearings are requested and then not attended.

Table 8 sets out some statistics on the Board. Approximately 25 percent of the applicants requesting an oral hearing withdraw their requests and often they do not notify the Board that they are not going to appear until a few days before the hearing date. What is more, about 33 percent of the appellants scheduled to appear for oral hearings do not even bother to inform the Board that they are going to be absent.

While we cannot calculate with absolute certainty what this means in terms of the loss of efficiency, there can be no question that the loss exists. Equally important, such practice diminishes respect for the Board and the Patent Office. It is the type of practice that should not be countenanced on any basis. An attorney would not ignore a hearing scheduled before a judge in a court of law without informing the court. Knowing the consequences, he would be mindful of his obligations.

The proposed appeal fee has been arranged to encourage timely withdrawals of appeals, and to encourage parties to waive oral hearings when they are not necessary or there is no intent to be heard. Then too, the tactic, noted by the management survey report, of using a pending appeal as "cold storage" for a hopeless application may be discouraged by the appeal fee arrangement.

3. The delay in issuing patents

The unreasonable delay between the time a patent application is filed and the time the patent issues is a longstanding problem which the Patent Office has faced and which has occasioned regretful comment by a number of persons interested in the patent system. (See the discussion of Dr. Vannevar Bush in this subcommittee's study No. 1, "Proposals for Improving the Patent System.")

Ideally patents should issue promptly. In every appropriations hearing for the Patent Office, for many years, the Congress has expressed concern about the backlog. Indeed, it is often the dominant element of discussion at the hearings. The substantial buildup in the staff of the Patent Office since 1955 was authorized with the understanding that it was done to reduce the backlog.

There are several compelling reasons why patents should issue promptly. First, a patent is granted for 17 years from the date of issue, and an unduly prolonged

pendency extends the life of the patent. The Senate at one time was so much concerned about long pendency that it passed a bill to limit the life of patents to not more than 20 years from the time of filing (S. 2688, 76th Cong., passed the Senate April 26, 1940).

Moreover, the consideration for the grant of the patent is the disclosure of the invention to the public; and that disclosure is made to the public when the patent issues. This consideration is of special importance today when the rate of technological innovation is at an alltime high and increasing. Beyond that, while a patent is pending, important business decisions about investment must often be delayed both on the part of the applicant or his assignee and on the part of competitors. All of these reasons argue for as prompt an examination and issuance of patent applications as possible.

While the period of prosecution of an application has varied over the years, at the present time it takes an average application more than 3 years to go through the examination process. Consistent with proper examination, this period should be reduced to provide for early publication, thereby stimulating the research and product competition of others.

A fee bill, at least in part, should seek to reduce unreasonable delay in prosecution, and it is believed that the issue procedure provided by this bill works toward this end.

Figure 15 compares the period of pendency of a typical application in 1960 and 1961 with the period expected under the new arrangement. In 1960, the typical period was 37 months; and even with the shortened time for response following the third Office action, which, as I have said, was instituted in 1961 to speed up final disposition of the older cases, the period now averages 34 months. Under this bill, the average spread between the application filing date and the issuance of the patent would be reduced to approximately 27 months. This would be accomplished by issuing the patent after allowance as a matter of course, and collecting the fee after issue. The present practice is to notify the applicant that the patent is believed allowable, give him 6 months in which to pay the final fee, and thereafter permit him to defer issue of the patent up to 90 days after the final fee is paid (see appendix C–1).

While section 4 of this revised bill permits the Commissioner to issue the patent after notice of allowance of the application is given to the applicant, we intend to provide by rule for a reasonable period of time—for example 30 days—during which the applicant may file divisional or continuation-in-part applications or file foreign applications or the like. Although the New York Patent Law Association approved all of the fees in H.R. 10966 except the maintenance fees, it felt that section 4 of the bill should be amended to avoid jeopardizing any right applicants have now under current practice. We agree that an applicant should continue to have the privilege of abandoning his application, or filing a divisional or foreign application. However, it should be provided for by rule. It should be recognized that, in the past, there has been a 5- to 7-week lag between the time an application is passed to issue and the time it actually issues as a patent because of processing. This normal delay in addition to the 30 days we plan to provide should be adequate.

This bill will not in itself reduce the period of pendency of applications as much as we would like to reduce it, but it will help.

4. The accumulation of unexpired patents that are never used

A reduction in the number of unexpired patents, for which use or potential use is not contemplated by the patentee, would do two things. First, it would eliminate patents that owners believe are not valuable enough to justify payment of the fee. Thereafter, these patents would not impede other commercial ventures. Second, it would simplify right-to-use investigations, which are undertaken by parties prior to commercial use of a product to ascertain whether or not they will be infringing the rights of others.

I explained earlier the maintenance fees that would be required by sections 5–8 of the bill. If the history of the patent systems of European countries may be used as examples, we have every reason to believe that a dramatic reduction in the number of patents in force at any one time will occur under a maintenance fee system. Figure 16 illustrates the renewal experiences of a selected number of foreign countries. Roughly speaking, in the experience of these foreign countries, after the first 5 years of the period considered, around 80 percent of patents were still in force, after the ninth year about 30–50 percent were still in force and after the thirteenth year only 20–25 percent were still in force. Most of these times run from the filing date of the application and not the issue date; in our calculations we have adopted the figures of 50 percent after 5

years, 25 percent after 9 years, and 15 percent after 13 years, these times being from the issue date of the patent.

What this means can best be appreciated when it is remembered that we now issue approximately 50,000 patents each year (and this number will increase as the present trend continues). Assuming this rate, however, we would have approximately 850,000 patents in force, say, 15 years from now. On the other hand, if maintenance fees are in effect during that period and the experience of European countries proves to be ours, instead of 850,000 patents there would be only about 430,000 still in force. The resulting simplification in infringement searches and in other investigations, primarily concerned with patents still in force, would be of considerable help to industry. Moreover, new businesses would be far freer to utilize prior art in the development of their products and processes.

V. POSSIBLE OBJECTIONS TO THE BILL

Arguments may be made, just as they have been in the past on bills designed to raise the level of fees for Patent Office services, that the proposed bill will impede progress in general, and, particularly, that some of its provisions are discriminatory.

If we were to catalog the anticipated objections to this bill, they would go something like this:

A. Fees should not be raised because the patent system benefits the public and the applicant is a public benefactor to be honored, not taxed.

B. Higher fees will suppress the flow of applications by reducing the incentive to inventors, and the patent incentive to technological innovation will abate accordingly.

C. Maintenance fees destroy incentives to invent and are unreasonably burdensome.

D. The claim differential charges are unreasonable, arbitrary, and discriminatory.

E. The issue fee is harsh and unworkable.

F. The fee for recording an assignment is much higher than the actual cost of recording the document.

G. The fee structure favors applicants and unfairly discriminates against patentees and assignees.

H. The provisions of the revised bill are too expensive to administer by the Patent Office and by patent owners.

Let us take them up in order.

A. Argument: Fees should not be raised at all

There is little support for this contention at the present time. Bar associations and most private attorneys have believed for a number of years that some reasonable increase in fees is both desirable and necessary. The American Patent Law Association as early as 1953 adopted a resolution which stated in part:

"Whereas it is understood that the Director of the Bureau of the Budget, after studying the question of charges which should be made by the various departments of the Government for services which it renders, made a statement which may be summarized in substance as follows:

* * * * * * *

"3. Where the service rendered is one which is partly of direct benefit to the recipient of the service and is also of service to the public generally, an equitable division of the costs should be made between the two;

* * * * * * *

"Now, therefore, be it

* * * * * * *

"II

"*Resolved*, That the granting of patents and the distribution and sale of patent copies is beneficial to the public as well as to the patentees and is a joint service to both, the cost of which should be equitably divided.

* * * * * * *"

More recently, the board of managers of the APLA, although rejecting the companion bill H.R. 10966 in toto, approved of increased filing and final fees. Similarly, the Patent, Trademark, and Copyright Section of the American Bar

Association during its 1962 meeting approved of a moderate increase in filing and final fees.

Contrast these positions with the position taken by the U.S. Chamber of Commerce. It approved companion bill H.R. 10966, except that it felt that the bill should provide full recovery. Their letter to Chairman Willis of Subcommittee No. 3 of the House Committee on the Judiciary reads as follows:

"DEAR MR. WILLIS: The national chamber urges your subcommittee to recommend a realistic schedule of fees which would enable the Patent Office to be self-supporting. H.R. 10966, now being considered by you, would substantially increase such fees, but would not provide sufficient revenue to recover all Patent Office costs.

"The chamber believes that whenever practicable, the costs of Government programs, which provide special benefits to identifiable groups or individuals in excess of benefits to the general public, should be borne by those receiving the benefits.

"The Patent Office does provide special benefits to inventors, applicants for patents, and holders of patents. We believe they should bear the cost of the patent system. For many years they did. The Patent Office was self-supporting over a large part of its existence. However, the fee structure, instituted in 1932, and designed to maintain a balance between income and expenses at that time, has been woefully inadequate in the face of increases in operating costs since approximately 1940.

"A table of income and operating costs of the Patent Office, submitted to your subcommittee by the Commissioner of Patents, is a graphic portrayal of the inadequacy of the out-of-date fee structure. In the period 1900 to 1940, income from fees actually exceeded operating costs in 22 years, and in the same 41-year period only 5 years show income of less than 90 percent of costs.

"Cost recovery has eroded rapidly since 1940; it has not again reached 90 percent. In a steady decline, it has dropped to 32 percent in 1961 and is estimated at 31 percent in the current year.

"It is true that income from fees has increased 77 percent—$4.3 million in 1940 to $7.6 million in 1961. But operating costs in the same years increased 413 percent—$4.6 million in 1940 to $23.6 million in 1961. Substantial increases in personnel costs (including eight general pay raises since 1945) and printing and reproduction costs have left fee collections far behind.

"The chamber is of the firm opinion that under existing rates the general public is subsidizing the specific beneficiaries of the patent system. It strongly recommends enactment of legislation which would provide for recovery of the costs of the Patent Office by means of an equitable fee system.

"We urge your favorable consideration of this letter. Also, I will appreciate it if you will include this in the record of hearings on H.R. 10966.

Sincerely yours,"—

and so forth.

The fact that we have covered our operating costs in the past has also suggested to many others that there should be some relation between fees and operating costs. For example, the report of the House Committee on Appropriations of the 79th Congress, 2d session, Report No. 1890 (1947), said in part:

"The committee believes that this agency should again be made self-sustaining by increasing many of the fees connected with the processing of applications and the sale of copies of patents. Recommendations for major changes in the present fee system are now before the Patent Committee of the House."

As you know, members of the House and Senate Appropriations Committees have made it clear for many years that the Patent Office should collect a higher percentage of its operating costs. For example, at one appropriations hearing, Senator Ferguson said:

"We have been talking about this in the Judiciary Committee for years, and the chairman has urged this for years. There seems to be always a resistance in the Patent Office on charging, on getting your fees sufficient to carry it." (Department of Commerce appropriations for 1952, Committee on Appropriations, U.S. Senate, 82d Cong., 1st sess.)

In sum, the argument that our fees should not be raised is no longer consonant with the times.

B. Argument: Higher fees mean fewer applications

This objection is leveled against any bill that proposes to raise fees. It is, I believe, ill founded. We may approach this contention by considering the per capita figures for application submissions. The per capita filing of applications in the United States is less than in many European countries even though these

countries have substantially higher fees. Table 9 makes this clear. For example, in Germany the per capita number of applications filed is 1.01 per 1,000 population. By contrast, the United States per capita figure is 0.44. High per capita figures are also prevalent in Great Britain (0.61), the Netherlands (1), Sweden (1.65), Norway (1.09), and Switzerland (2.63). A large proportion of the applications filed in these countries are filed by U.S. companies. These figures exceed those of the United States, even though all of the European countries named have maintenance fees—which American patent owners pay just as others do—and the total sum of the fees paid during the life of a patent is considerably greater than the U.S. total of $60.

The experience of European countries fails to bear out the fear behind this objection in another way. European countries have not found that the number of applications filed decreases significantly after they increase their fees (table 10). Many European countries increased their fees in the 1950's, some even twice. There was no significant change in the number of applications filed before and after the fees were changed. This suggests, at least to some extent, that increases in fees have not had depressing effects on the number of patent applications filed.

Here, again, it is relevant to say that the present filing and final fees (and those proposed by this bill) constitute a relatively small part of the applicant's cost of obtaining a patent of average size when an attorney is employed. (Table 6 and fig. 6.) And approximately 96 percent of all applications filed in the U.S. Patent Office are prepared by someone other than the inventor. It is not unreasonable to assume that this percentage reflects, with a small margin of error, the number of applications prepared by attorneys. Additionally, many of the few inventors who prepare their own applications subsequently have them prosecuted by an attorney, upon either their own initiative or that of their assignees, as the case may be.

Now let me talk about the "garret," indigent or independent inventor, about whom this subcommittee, I expect, will hear a great deal if past hearings are a guide. It is sometimes asserted that by increasing the fees even slightly, we will discourage the independent inventor from filing his application, and therfore, will prevent the public from obtaining his inventive contributions. In spite of the fact that inventions are coming increasingly from complex research centers, we feel, nevertheless, that the independent inventor should be given consideration.

This bill treats him equitably. It permits him to defer the first two maintenance fees if he has not been successful in exploiting his invention. It minimizes the increase in the filing fee in comparison to the issue, appeal, assignment and maintenance fees, so that he can have his "day in court" at a minimum price. And, finally, under this bill the small application that he usually files is less costly than are the lengthy applications filed in most cases by corporations.

In point of fact, much of the rhetoric against rises in Patent Office fees is inevitably cast in terms of the small inventor. Yet, as shown by our assignment records, approximately 70 percent of patents issued in 1961 were assigned to companies. Moreover, when the bar associations are pressed to decide whether they are more concerned about the small inventor and his opportunity to get a low-cost hearing in the Patent Office or about the imposition of maintenance fees, they usually conclude that increased Patent Office income should come, if at all, from higher filing and issue fees. Yet, often before he is in a position to exploit his patent, the filing and issue fees apply full force to the small independent inventor. This point and others are cogently discussed by Stephen H. Frishauf, senior patent attorney for the International General Electric Co., in an article published in the Journal of the Patent Office Society (44 JPOS 219 (1962)):

"When the costs of Patent Office operations are charged against the issued patents, it is possible to lower, or keep at a lower level, those fees which now are levied by the Patent Office at the time of filing or grant of a patent. The burden for applying for a patent is distributed, at the present time, rather heavily at the time the application is prepared. The Government fee of $30 is a comparatively minor item. The attorney's charges, or, in a corporate department the time charged by the attorneys, in preparing the patent application, (and a possible incentive bonus to the inventor) are usually very much in excess of this fee. The cost of drawings, particlarly if they involve any degree of complexity, also is large and a single sheet, on the average, approaches the cost of the Government filing fee. Although the percentage increase in the total costs to the applicant, if filing fees are raised, may be comparatively low, the burden will still fall at a time when in many instances, the invention is as yet untried in the marketplace. Since it is the policy of our Nation to encourage disclosure of

inventions, (which disclosures can be made entirely apart from the printing of a patent afterwards) then it would appear that efforts should be made to decrease the costs to applicants at the time of filing. Later on, as experience is gained in the actual use of the inventiion, it will be apparent whether the invention represents that kind of technical advance which can be profitably exploited. If it does, the inventor will reap the benefits; yet even if the invention is not commercially successful, the main purpose of the patent system, publication, has been achieved. When the applicant, however, only has expenses, they should preferably be kept to a minimum. It appears fairer to place the burden at least of official costs at the time when a gain is realized—during the lifetime of a commercially successful patent."

C. Argument: Maintenance fees destroy incentive and are unreasonably burdensome.

It is fair to say that the organized bar officially opposes maintenance fees. The American Patent Law Association has reiterated its opposition to maintenance fees in any form. And more recently, the section on Patents, Trademarks and Copyrights of the American Bar Association at its annual meeting in San Francisco passed a resolution disapproving in principle the imposition of maintenance fees under any circumstances.

To avoid any misunderstanding, let me emphasize that the bar does not unanimously oppose maintenance fees. And, as reported the proceedings of the patent, trademark, and copyright section of the American Bar Association, after the 1961 St. Louis meeting (pages 59–60):

"Robert C. Watson [the former Commissioner of Patents] * * * said that during six trips to Europe during his service as Commissioner of Patents he asked two questions of the heads of foreign patent offices. These were: First, Is there a full cost recovery in your country of the cost of operation of the Patent Office? The answer always was "Yes." Second, Is there any disposition by any elements in your country to eliminate maintenance fees? The answer was always "No."

"He saw many advantages to the adoption of a system of such fees * * *"

Mr. Watson reaffirmed his view at the 1962 San Francisco meeting. In addition to my predecessor's views, Mr. Elmer J. Gorn, Patent Counsel for the Raytheon Manufacturing Co., and Mr. William R. Woodward, Patent Counsel for the Western Electric Co. dissented from the Special Fee Committee's position opposing maintenance fees. Mr. Gorn said:

"If we are to oppose maintenance fees, we must face the alternative of an increase in filing and final fees. The report, while condemning maintenance fees and supporting an increase in filing and final fees, fails to indicate what the magnitude of the latter is to be. It seems obvious that if Congress were to eliminate the maintenance fee provisions of H.R. 10966 and were to substitute a corresponding increase in filing and final fees, it would add about $100 in such fees to those already proposed in the bill. For a modest sized case of two sheets of drawings, seven printed pages of text, and no extra claims, the total of such fees would amount to $254 as compared to $60 at the present time. Frankly, I believe that such an increase would be more of a restraint on the filing of patent applications than the proposed scale of maintenance fees. Virtually every applicant, when he files his application, is bound to believe that, before any of the maintenance fees become due, his patent will be worth much more than such maintenance fees. It is another matter to have to pay $250 or more in fees before he can expect to get any return from his patent."

Mr. Gorn's views were shared by a substantial minority of those attending the convention who, in common with him, believed that it was not enough merely to oppose maintenance fees but that it was necessary to make a choice between maintenance fees and steep filing and final fees. They preferred maintenance fees.

D. Argument: The claim fee differential is unrealistic and unfair

I have already dealt at length with the unreasonable impositions that vast numbers of prolix claims in applications make on examiners, judges, and other attorneys. I think that this alone answers the argument that economic incentives for better claim practices are unfair or unrealistic.

One may look at the claim practices in European countries, where applications are filed on most important U.S. inventions. Table 11 enumerates the characteristics of the average patent in the United States, Great Britain, and Germany. These figures show that the average U.S. patent is substantiallly larger than its German and British counterparts, and that in the United States

the number of independent claims in a patent averages 4.38, compared to 1.02 in German patents, and 2.70 in British patents.

Certainly there are differences in patent practices and law in Great Britain, Germany, and the United States (both as to the approach they take to patent disclosures and as to the breadth of protection their courts provide), but the fact remains that these examining countries, in common with most other examining countries in the world, require the applicant to limit himself to a few independent claims. In Great Britain, rarely is an application filed that has more than four independent claims. Any number over a very few is rejected by the examiner, as a matter of course. The British patent agents, recognizing that the courts will uphold the Office in this connection, withdraw excessive claims. More often, they are never submitted. In Germany, practice requires that a main claim be used with other claims depending from it, as I illustrated to you in connection with figure 14. Any other method of claiming is almost always refused consideration.

The section on patents, trademarks, and copyrights of the American Bar Association at its annual meeting in 1961 voted in favor of a surcharge on independent claims, by passing the following resolution: "*Revolved*, That the section approves the principle that, in the case of any additional fee for excess claims over a predetermined maximum, a lesser fee be charged for claims in dependent form to encourage their use." However, at the 1962 convention, the section changed its earlier position by adopting the following resolution:

"*Resolved*, That the American Bar Association disapproves in principle any establishment of filing fees which would differentiate between the different forms of claims.

"Specifically, the association disapproves those provisions of H.R. 10966 which provide for lower filing fees for dependent claims than for independent claims."

Others have backed these features of the bill. The New York Patent Law Association in its May 1962 Bulletin made the following statements:

"We are in accord with sections 1, 2, and 3 of H.R. 10966. The increased fees they provide appear to be justified generally by the need for additional revenues to offset the increased cost of Patent Office operations. There is merit, too, in their encouragement of succinctness and brevity in patent applications, their requiring higher fees for applications which are normally more demanding of Patent Office services, and their discouragement of filing appeals for the purpose of delay."

This judgment by the New York Patent Law Association and by numerous respected practitioners of patent law throughout the country reinforces the view of the Patent Office, the Patent Office Society and numerous courts that dependent claims are easier to understand, are less wasteful of people's time and should be encouraged. And I believe the bar would unanimously agree that the encouragement by economic incentives, rather than legislative or administrative fiat, is preferable.

E. Argument: The issue fee is harsh and unworkable

The size of an application, in terms of the number of pages of specification and the number of sheets of drawings, has a direct bearing on the amount of time it takes an examiner to study and understand the invention, regardless of how many claims define the invention. It seems eminently fair to me, without saying how much an issue fee should be, to say that a greater portion of the cost of operating the Patent Office should be borne by those applicants who file the longer and more complicated patent applications than by those applicants who file short, succinct, and simple disclosures.

The reasonableness of the components of the proposed issue fee is evidenced by the cost of printing alone. (See table 3.) Even if we completely ignore the increasing difficulty of examination, which is at least roughly related to the length of the specification and the number of sheets of drawings, the cost for printing and publishing an average patent in fiscal year 1962 was $63. This amounts to a printing charge per page of approximately $15 (excluding the printing cost of $11.95 per page for the Official Gazette which is partially allocable to the patents issued in a year). As I have noted, this is not an internal cost which is subject to the natural error of any estimated cost, but is the amount which the Government Printing Office charges us for printing the patent specification. In addition, it costs us $1.74 for each sheet of drawing in the patent.

If we add to the printing cost and impact of the complexity factor, the cost of examining the application and providing other services in connection with it,

it is abundantly clear that the proposed charge of $10 for each page of specification as printed and $2 for each sheet of drawing is quite low.

Originally we considered proposing a charge for the number of pages of specification as filed and the number of sheets of drawing as submitted. One of the difficulties with this proposal, however, was the objection earlier raised by members of the bar to the effect that it would be difficult to compute the actual fee in advance. For this reason, we preferred the issue fee arrangement set forth in companion bill, H.R. 10966. Under the concept embodied in the bill, it is a simple matter for the applicant or his attorney to determine the exact amount of the issue fee after the patent issues but before the fee is due.

Some have opposed a charge based on the size of the patent, arguing that the charge for the number of claims is really a charge for length, and hence, together with the issue fee, a double charge for size. Our studies do not bear out this theory. Though there is some rough correlation between the length of applications and the average number of claims, figure 17 shows that the scatter for applications is large. (In fig. 17 the horizontal lines represent the average number of claims per 40 pages of specifications.) The data for figure 17 were taken from two divisions that handle complex subject matter and a high percentage of "jumbo" applications, but the fact remains that the variations in the number of claims for applications of a given size are extreme.

This should dispel any misgivings that our claim differential charge is primarily a charge for lengthy applications. Rather, it is a charge to encourage clarity in claiming and to discourage prolixity. It is the proposed issue fee which attempts to account for the length and complexity of applications. And, too, the small independent inventor is considered. For studies show that it is the assigned applications in complex arts that are long, not the bulk of unassigned applications describing less complex inventions.

While the patent section of the American Bar Association is opposed to obtaining part of the fees based on the length of the application and the number of drawings, the New York Patent Law Association approved of this proposal as being one which will encourage "succinctness and brevity in patent applications." Some have argued that the issue fee would be costly to administer. On the contrary, as I shall later explain in detail, the cost of administration would be comparatively small.

F. Argument: The assignment recording fee is too high

This bill proposes a substantial increase in the fee for recording assignments. I do not pretend that this is based upon the actual cost of the work to the Patent Office. It is primarily an effort to provide income which otherwise would have to be recovered by increasing the other fees required by the bill. But let me hasten to say that there are quite defensible reasons for a recording fee of the size provided for. Patents would not be assigned if the assignee did not consider them of value. At least, we know that this recordation fee is being assessed upon a party who is receiving value from the patent system.

As I have stated, about 70 percent of patents nowadays are issued or assigned to American or foreign companies (table 12). Surely, when the cost of an average application prosecuted by corporations is in the range of $1,000 to $2,500, the assessment of a $20 recording fee for recording this assignment, if they want to avail themselves of the constructive notice it imparts, is not unreasonable.

In sum, all we are trying to do is assess some part of our operating expenses against assignees of patent and trademark instruments rather than against the applicants themselves. Under this arrangement, until an inventor is able to sell his invention, nothing is required from him by the proposed recording fee. Once he has successfully sold his invention it would not seem unreasonable to require the purchaser to pay a fee for the privilege of recording the valuable interest transferred to him.

G. Argument: The fee structure discriminates against patentees

The objection may be made that this bill discriminates against patentees and assignees. We have exercised judgment, however, in allocating the fee cost as between applicants, patentees, and assignees to obtain both the necessary incentives to good practice and the necessary revenue.

For example, the charge of $10 per page of printed specification and $2 for each sheet of drawing is a charge designed to reduce excess verbiage in applications as filed. To this extent, the applicants whose applications are abandoned do not pay this charge for complexity and length; it is instead borne by the patentees.

It is our judgment that a greater proportion of the cost of examining and issuing patents should be borne by those who are successful in obtaining patents than by those who are unsuccessful. And let me reemphasize at this point that the issue fee is considerably below the actual cost of issuing patents.

Maintenance fees are more favorable to applicants than to patentees. Applicants will not bear the maintenance fees at all. However, 4 or 5 years after the patent issues, the patentee is in better position to judge whether his invention is worth the cost of the renewal fee. If it worthless, he skips the fee and the patent lapses. If it has value—as little as $100—he pays the fee and is confirmed in his rights and benefits for another 4 years.

In all these cases, to some extent, we have proceeded on the theory that beneficiaries of issued patents should bear a larger part of the burdens of the Patent Office and the patent system which made these benefits possible.

I want to emphasize that I do not regard this as a naked, ability-to-pay principle. As between the applicant and the patentee, the examination system is for the patentee, not the applicant. Our examination system is a great hurdle to the applicant; it is a great safeguard to the patentee. An applicant must convince the Patent Office that his invention is patentable over all the world's prior art; and this can be an arduous task. A patentee, however, because of his success in the Patent Office, has a legal presumption of the validity of his patent and also of priority against the award of patents to rivals later claiming the same subject matter.

I suggest, therefore, that it is not at all unreasonable that the patentee share more significantly than the applicant in the cost of maintaining an examination system.

H. Argument: The provisions of this bill are too expensive to administer

The argument has been made that various parts of this revised bill will be too difficult and too expensive to administer. The proponents of this argument believe that a good bit of the income to be gained by the provisions of the bill will be lost through the increased cost of their administration.

I want to dispel all such misgivings and make quite clear to your subcommittee that the cost of administering the bill cannot reasonably be termed excessive. In fact, this cost represents substantially less than 1 percent of the increased income anticipated under the bill.

A study and estimate of the cost of administering all of the provisions of this bill was prepared for the House Subcommittee No. 3. This study is attached as appendix C–2. It shows that the cost of putting all of the provisions of the revised bill into effect comes to something less than $100,000. On the other hand, the increased income anticipated under the bill is approximately $13 million. I am sure all will agree that these figures completely refute the contention that the bill would be too expensive to administer.

I would add here that another study made by us—at the request of a member of the House subcommittee—estimates the cost of giving a second notice to patent owners when maintenance fees are due (attached as app. C–3). Even this second-notice procedure, which I do not believe is really necessary, would add only approximately $35,000 to the total cost of administering the provisions of the bill.

Moreover, it is, I think, specious to contend that patentees are not capable of instituting economical and efficient procedures to keep up with maintenance fees as they become due. Apropos this contention is Mr. Frishauf's article, to which I have already referred, in which he states:

"Given the choice whether to spend more money at the time of filing (and possibly making a wrong decision not to file at that time) or spending money for maintenance fees after the patent had a possibility to prove itself, it is felt that the latter is of a greater advantage. The mechanics of periodic payments are simple—a card index is sufficient. If the number of patents is not very large, such a card index can be kept by a clerk having other duties. The decision as to whether to maintain or drop a patent can be made on the basis of inquiries reduced to routine questions circulated from time to time among appropriate personnel within the organization of the patentee, if the patentee or the patent attorney does not have sufficient personal knowledge to make, or recommend a decision himself."

VI. ARE THERE ALTERNATIVES?

As I have noted earlier, it is argued by some that the amount sought to be recovered by this revised bill is excessive. I do not agree. This revised bill proposes to recover only 75 percent of our currently budgeted expenditures and to

do so by a fee structure which will not be in full operation for 13 years. Moreover, because the complexity of applications and the scope of search of the prior art increase with each passing year, our expenditures will also increase. Consequently, for this reason alone—and there are others which I shall get to shortly—in 13 years what might have been a 75-percent recovery will be considerably less.

But that is not all. There are other factors that reduce or will reduce the income-to-cost ratio of the Patent Office operation.

First, space to house the patent operations and overhead costs such as lighting, heating, maintenance, etc., are not included in our budget. Nonetheless, these costs—estimated at 15 percent of our budgeted expenditures—are borne by the general public. In actual fact, therefore, applicants and patentees would be paying, 13 years after enactment of this bill, not 75 percent but only about 65 percent of what it now takes to operate the Patent Office.

Second, while our costs for 1962 were estimated on the basis of then-current printing costs (over $3 million), we have recently been informed by the Government Printing Office that these costs have increased approximately 7 percent, which is a substantial rise.

Third, if the Federal salary reform bill of 1962 (which is badly needed to help us attract and keep qualified professionals) becomes law, it will increase our expenses over the next 3 years, and reduce—along with the other factors mentioned above—what now appears to be a 75-percent recovery to a recovery of about 60 percent.

There are some who argue, not only that the amount we seek is too great, but also that the incidence of the fees is unreasonable. For example, the patent section of the American Bar Association, while condemning companion bill H.R. 10966, provides no better guide for us than that it favors a "moderate increase in patent application filing fees" and that it believes that "all fees of the Patent Office other than filing and issue fees should be increased to take into account the extent of inflation since 1932 when the present fee structure was set." The American Patent Law Association is more specific. After disapproving H.R. 10966, it approved a filing fee of $50 and a final fee of $75.

The cost-of-living increase in fees proposed by the patent section of the ABA would increase our present revenues by approximately $1½ million; but as to the filing and final fees, we have no way of knowing what "moderate" fee increases mean. The APLA proposal would increase our estimated revenue for fiscal 1962 by approximately $4 million, an amount which would still leave our recovery ratio at approximately 41 percent.

Another proposal was made before the House subcommittee during hearings on companion bill H.R. 10966. It recommends, besides miscellaneous fee increases, a $100 filing fee and a $300 final fee, but the latter does not have to be paid until the owner wants to enforce his patent (which occurs in less than 1 percent of the cases). Because of this permissive final fee, this alternative is not a cure, although the steep filing fee would bring our recovery ratio up to approximately 47 percent.

Aside from the inadequacy of income recovery under these proposals, all of them reject the features of this bill that would help us do our job more efficiently.

VIII. CONCLUSION

To these alternative proposals and others which may be made, we can only say that we have made an effort to allocate the impact of the fees consistent with the substantive features we believe are important, so that those who have applications, patents, and registrations of demonstrated value, will bear a larger share of Patent Office costs attributable to them than will those who are not so fortunate.

Persons opposing this fee bill must make up their minds, assuming some fee increase is necessary, about where the burden should be placed. If they do not want to harm the independent inventor and the incentive to invent, then they would appear to concur in our judgment. On the other hand, if they really do not care about the small inventor, they can suggest substantial across-the-board increases in major fees.

In any event, it should be incumbent upon those who object to specific features of this revised bill to suggest what other fees should be increased or what new fees should be established to make up for the loss that will occur if the feature they consider objectionable is eliminated or modified. For example, it can be argued that the assignment fee is unreasonable. But if the amount of this fee is materially reduced, which fee should be increased to

make up the loss? Should the maintenance fees be increased to a higher level, as they were in the earlier bill S. 2225? Should the filing fees be raised to $100, $200, $300? Should the issue fee be doubled or trebled so that the other fees can be reduced? In each case, a judgment must be made as to where the burden of fees for the operation of the Patent Office should be placed.

Let me sum up. The first question here is, should the Patent Office recover a substantial portion of its costs? Many Members of Congress have said yes, the Bureau of the Budget says yes, we say yes. And the President through his budget has also said yes.

The second question, then, is how should the fees be changed? We submit that they should be adapted to influence beneficially the work of the Patent Office and the courts, consistent with the recommendations of expert committees and knowledgeable commentators on the patent system.

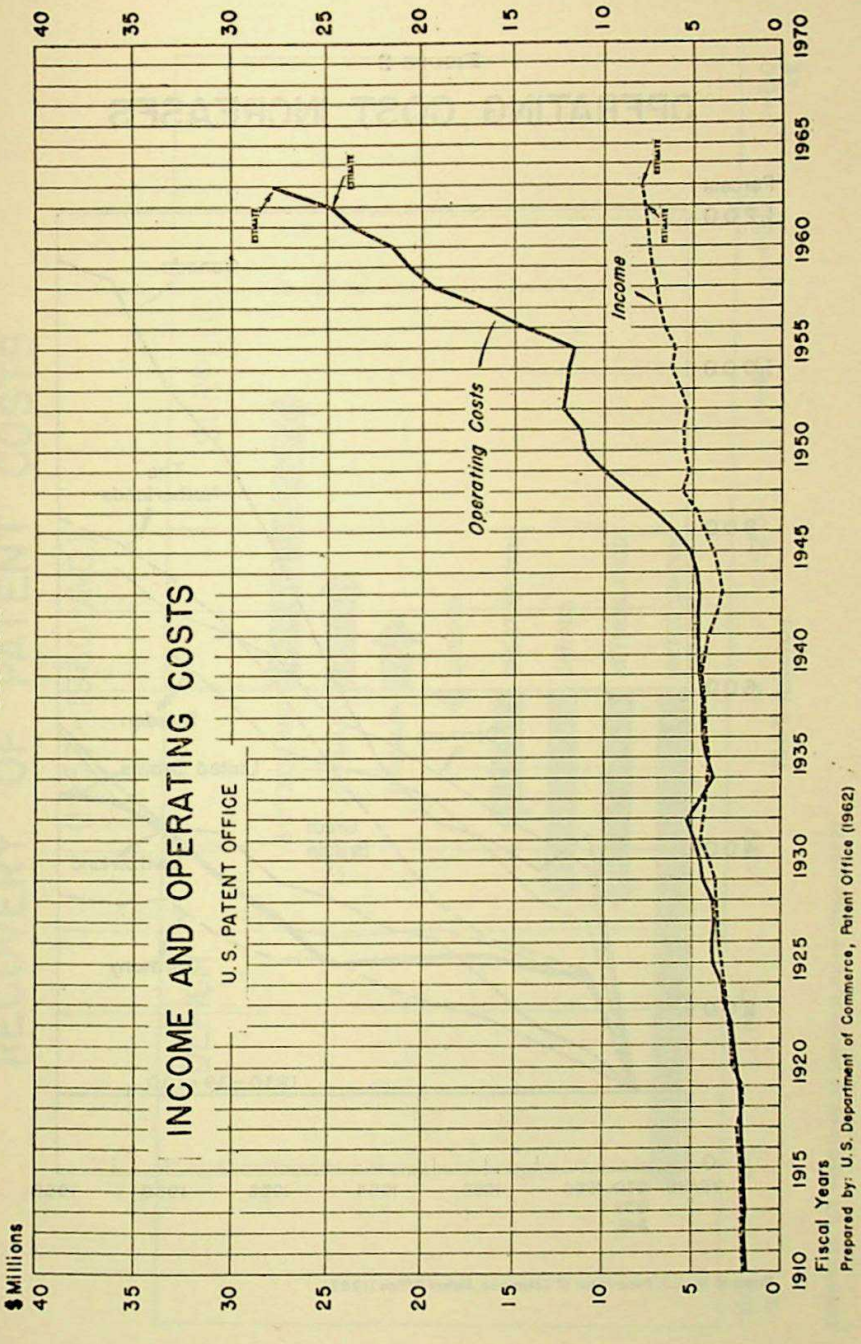
As I emphasized at the hearing before the House subcommittee, in the final analysis the issue is one of fiscal responsibility. If one is not to use that phrase as mere pious talk, then he who speaks must be fiscally responsible even when it touches his own pocket. We must not talk only about those sacrifices which others are supposed to make. And that is particularly true of the beneficiaries of the patent system, which is now in rough waters and will need even more congressional help in the years ahead.

Appendix A—List of Figures

Figure — *Description*

1. Income and operating costs, U.S. Patent Office (1910–63).
2. Operating cost increases—Trends in United States and selected foreign countries compared on 1930–39 base.
3. Recovery of patent costs (1957–60 average)—United States and selected foreign countries compared.
4. Cost recovery—United States compared with selected foreign countries.
5. Patent fees (United States)—Present fees in terms of 1932 dollars compared with 1962 dollar-equivalent and fees proposed in the revised bill for an average application.
6. Patent costs—That portion of total costs for obtaining a patent represented by present filing and issue fees and those proposed by the revised bill.
7. Income from selected fees (1962 estimates)—Present fee schedule and that of the revised bill compared.
8. Income by fees (1961)—From various Patent Office fees.
9. Distribution of operating costs (1961)—For U.S. Patent Office.
10. Cumulative fees comparison—United States compared with selected foreign countries.
11. Disposal rates and complexity factor—Comparison of average disposals per year by examiners in different technical areas.
12. U.S. patent parameters (1961 sample)—Relationship between pages of specification, sheets of drawing, and number of claims.
13. Claim analysis—Average time for analysis of independent and dependent claims of selected patents.
14. Claim form: Independent versus dependent—The independent claims of a simple patent are analyzed and rewritten in dependent form.
15. Pendency of U.S. applications—Comparison of periods between filing and issue of a typical application: 1960 versus 1961 versus revised bill.
16. Patent renewals—For selected foreign countries.
17. U.S. application parameters (division 42 and 68)—Relation between pages of specification and number of claims; random selection in complex arts handled by divisions 42 and 68.

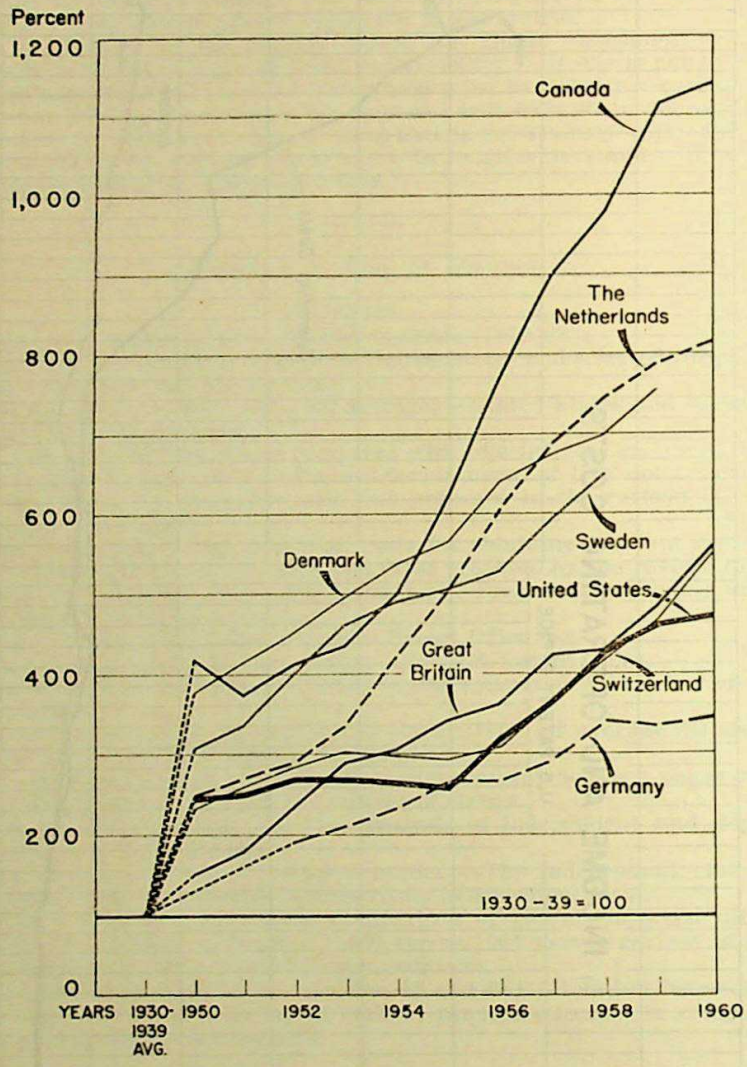
FIGURE 1



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 2

OPERATING COST INCREASES

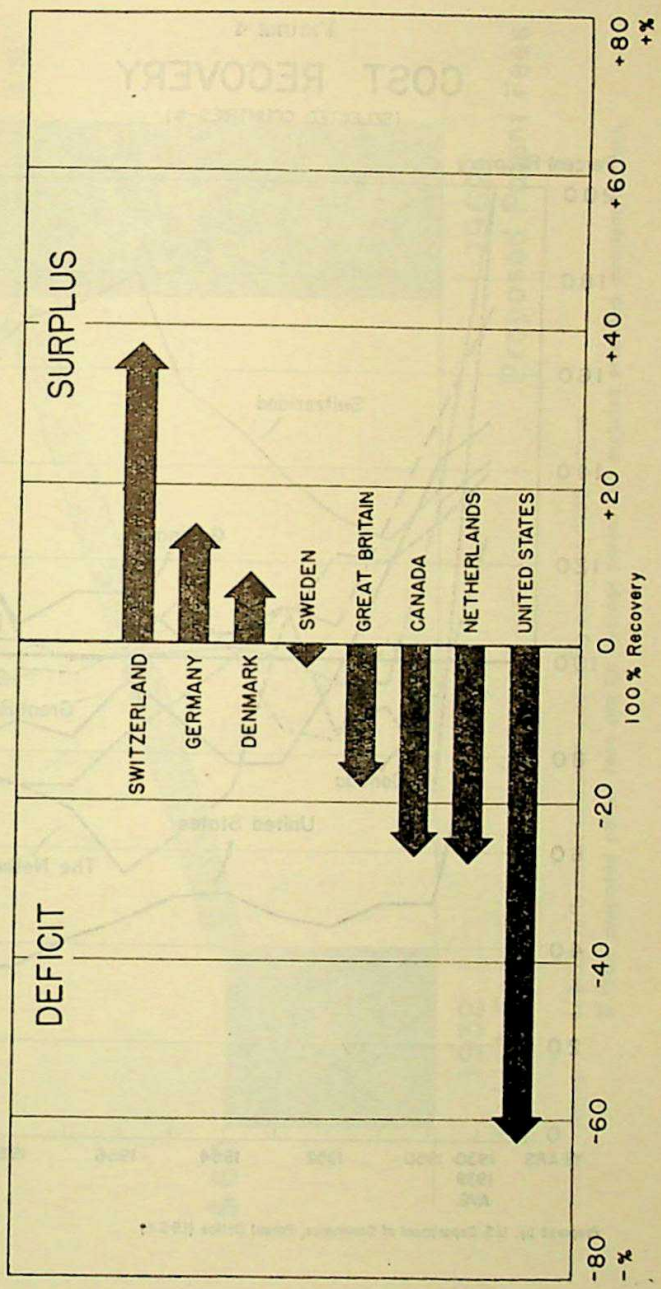


Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 3

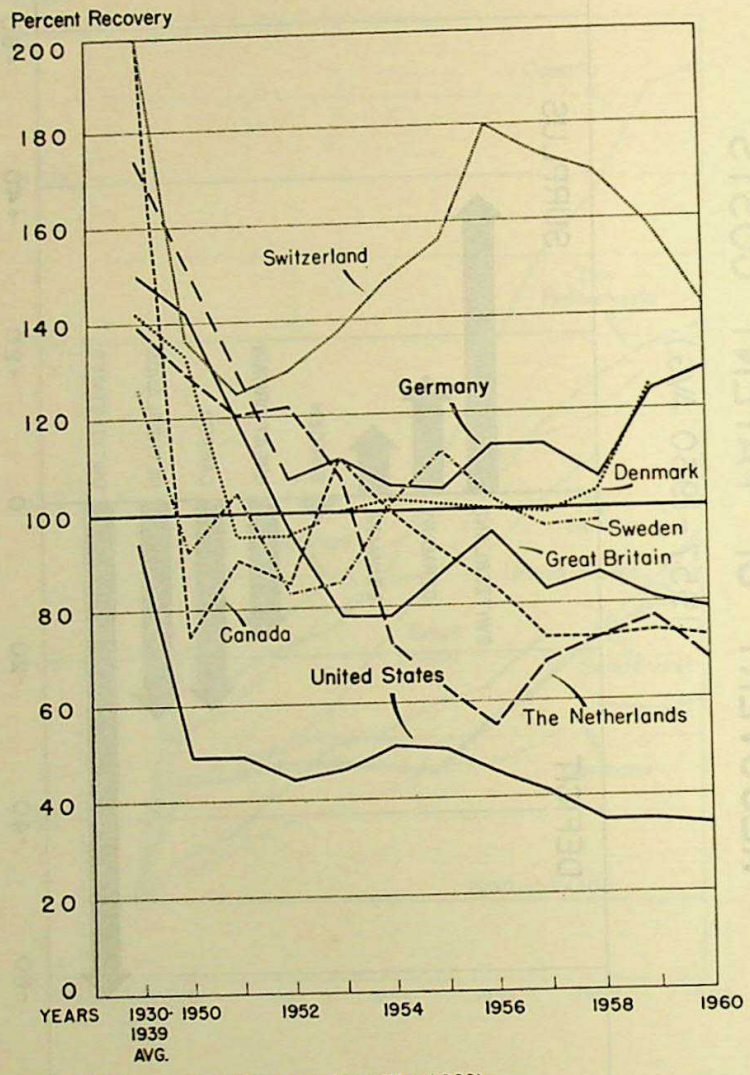
RECOVERY OF PATENT COSTS

(1957-1960 AVG.)



Prepared by: U.S. Department of Commerce, Patent Office (1962)

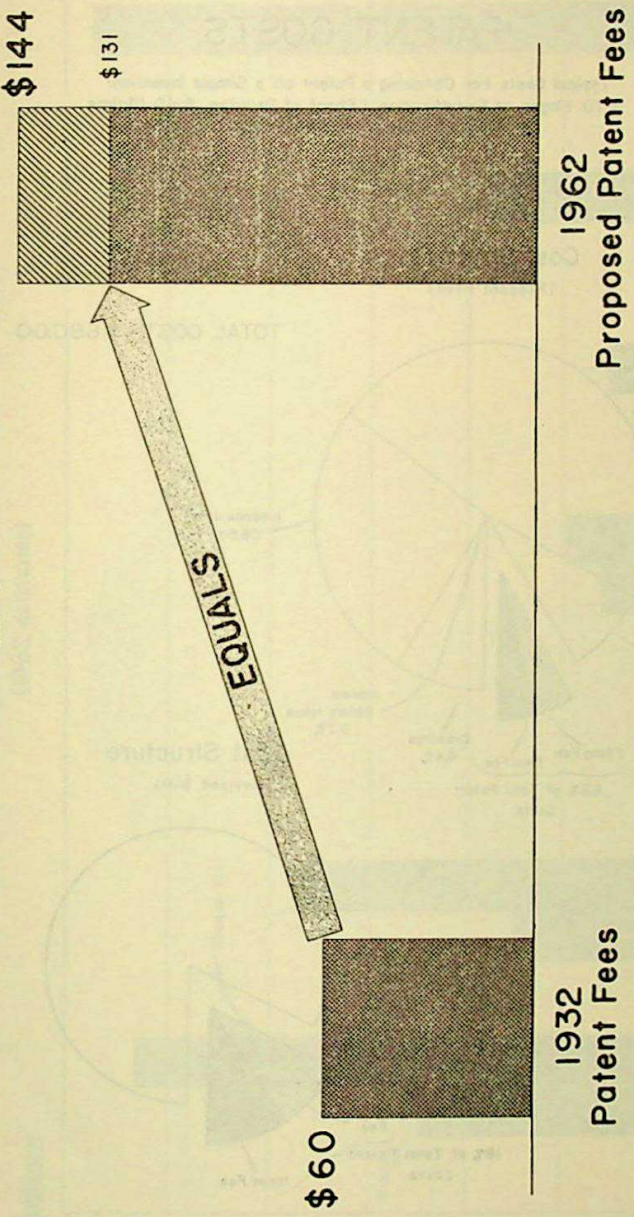
FIGURE 4



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 5

PATENT FEES
(U.S.)



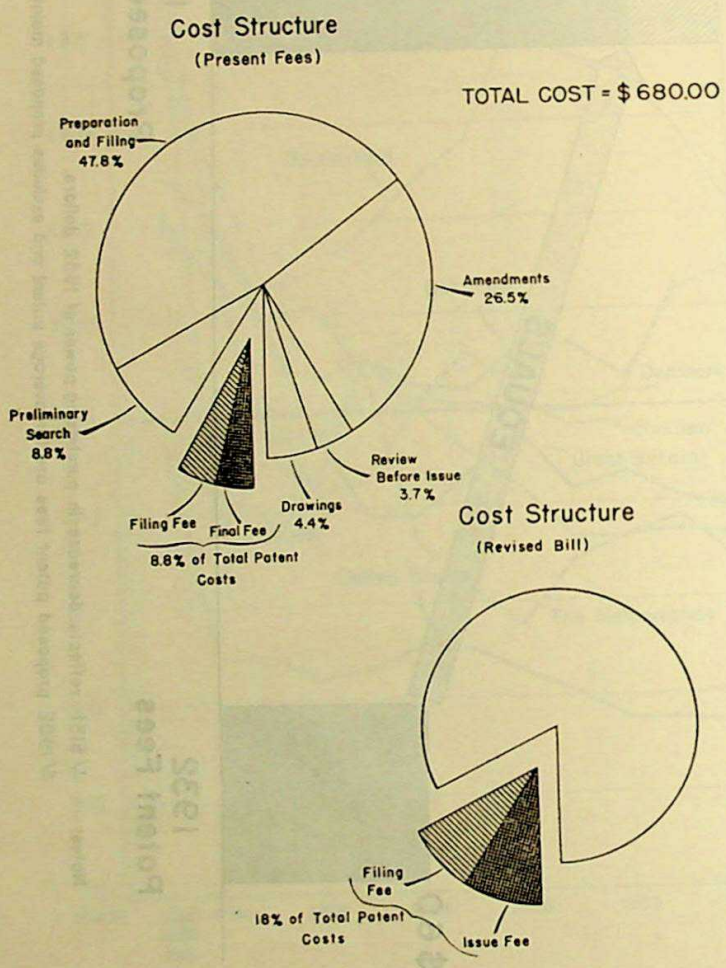
Notes: 1/ $131 reflects decrease in purchasing power of 1932 dollars.
2/ 1962 proposed patent fees are for average patent and excludes proposed maintenance fees.

Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 6

PATENT COSTS

Typical Costs For Obtaining a Patent on a Simple Invention:
5-10 Pages of Specification, 1 Sheet of Drawing, 5-10 Claims
(No Appeals, Interferences, etc.)

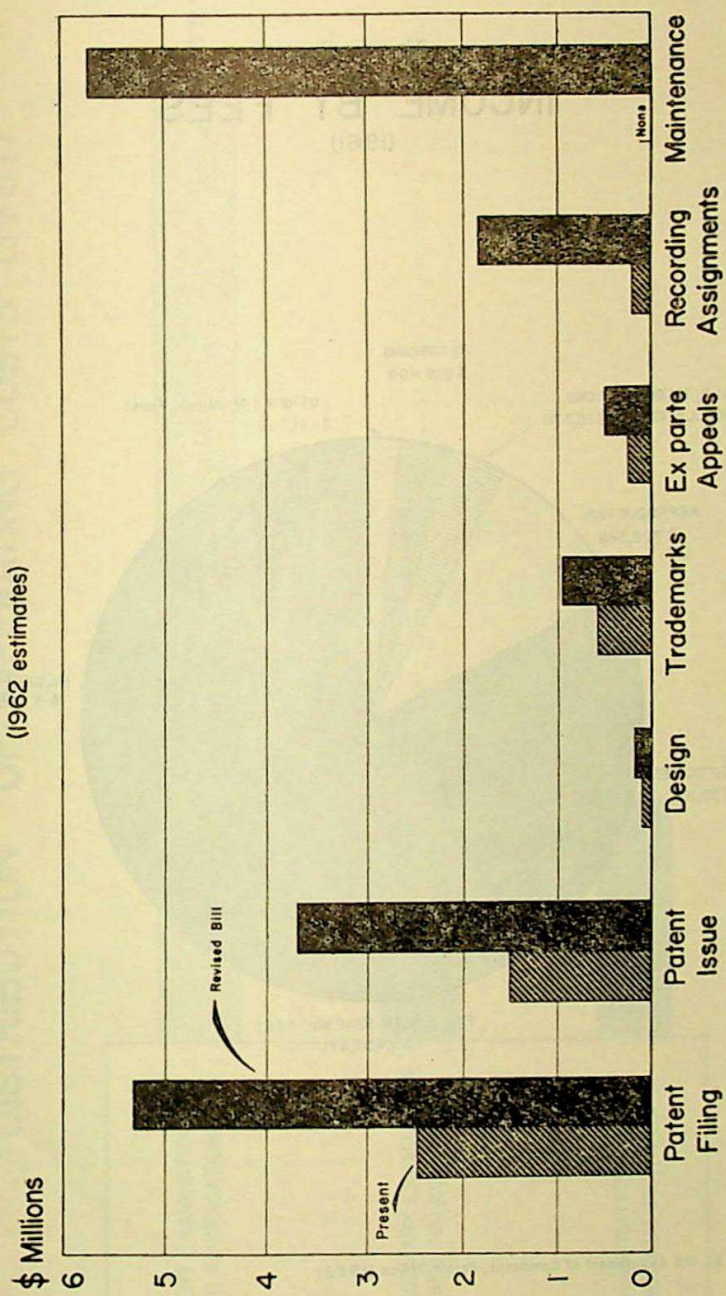


Prepared by U.S. Department of Commerce, Patent Office (1962)

FIGURE 7

INCOME FROM SELECTED FEES

(1962 estimates)

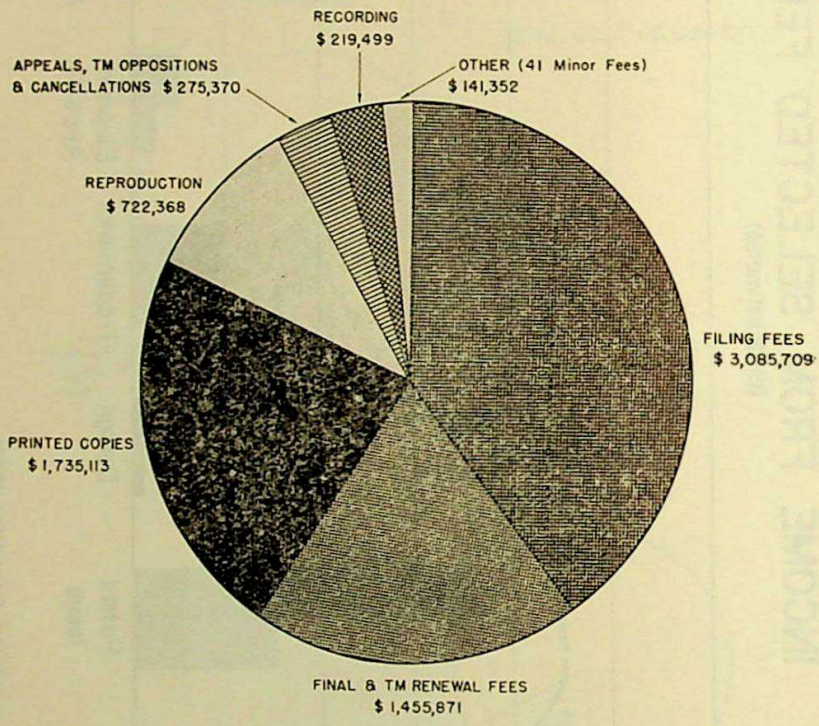


Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 8

INCOME BY FEES

(1961)

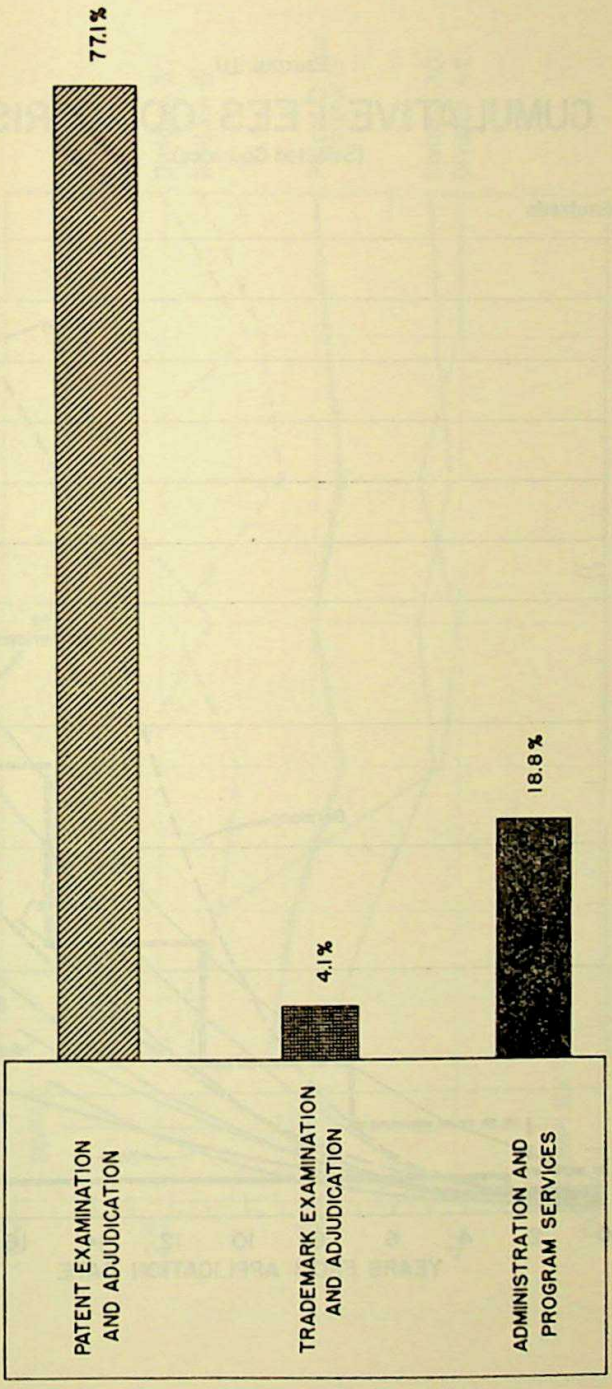


TOTAL = $ 7,635,282

Prepared by, US Department of Commerce, Patent Office (1962)

FIGURE 9

DISTRIBUTION OF OPERATING COSTS (1961)



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 10

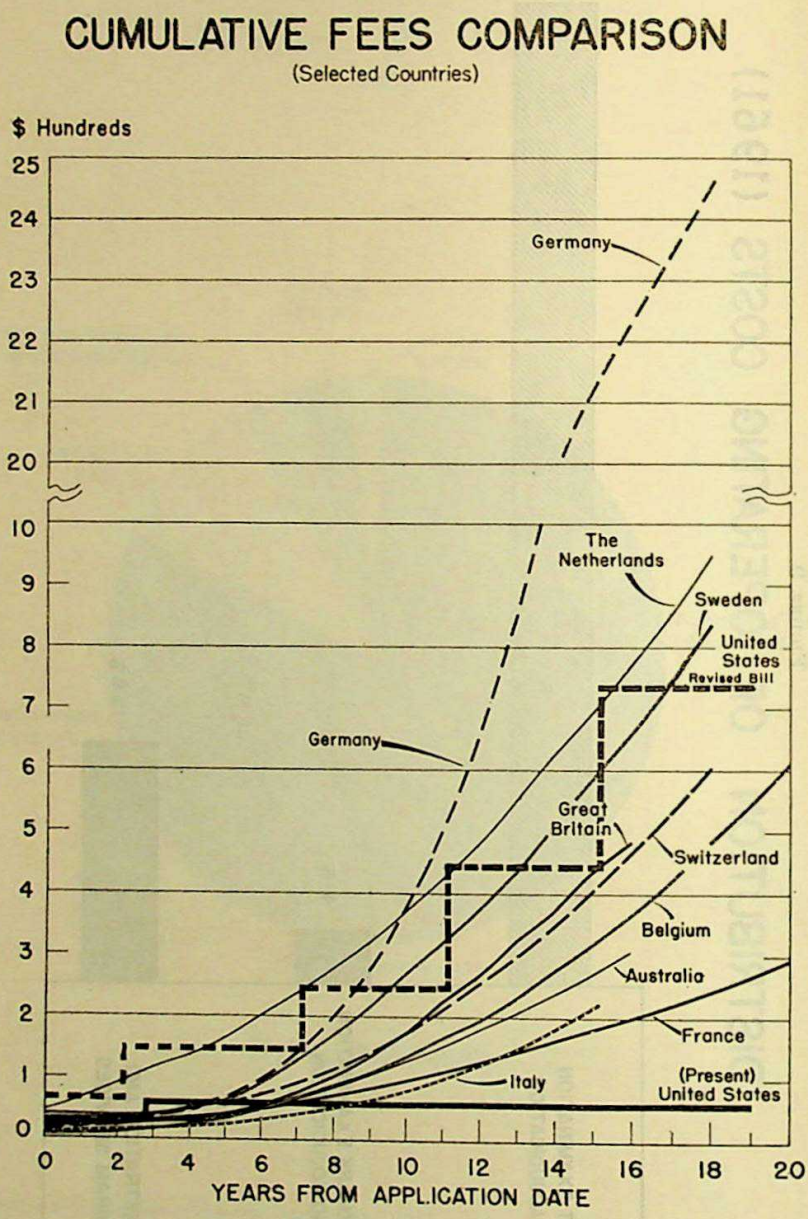
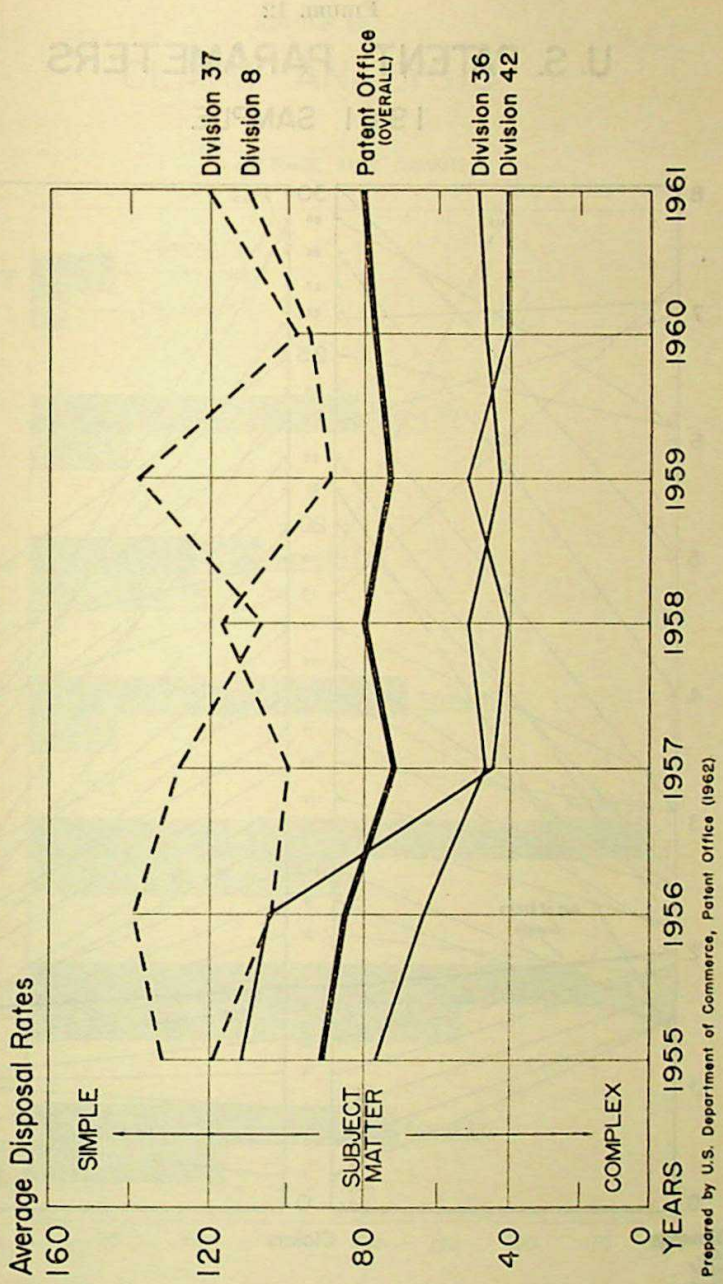

CUMULATIVE FEES COMPARISON
(Selected Countries)
$ Hundreds
25
24
23
22
21
20
10
9
8
7
6
5
4
3
2
1
0
Germany
The Netherlands
Sweden
United States
Revised Bill
Germany
Great Britain
Switzerland
Belgium
Australia
France
Italy
(Present) United States
0
2
4
6
8
10
12
14
16
18
20
YEARS FROM APPLICATION DATE

FIGURE 11

DISPOSAL RATES & COMPLEXITY FACTOR

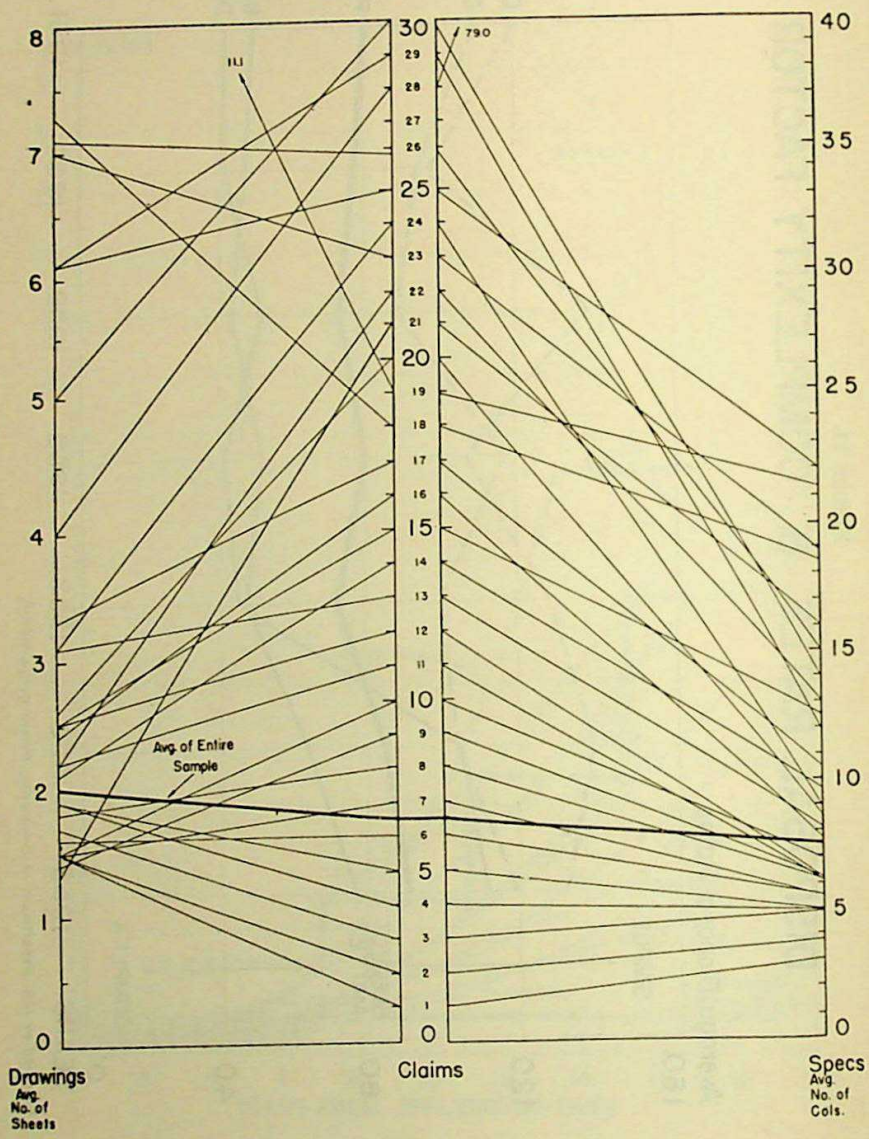


Prepared by U.S. Department of Commerce, Patent Office (1962)

FIGURE 12

U. S. PATENT PARAMETERS

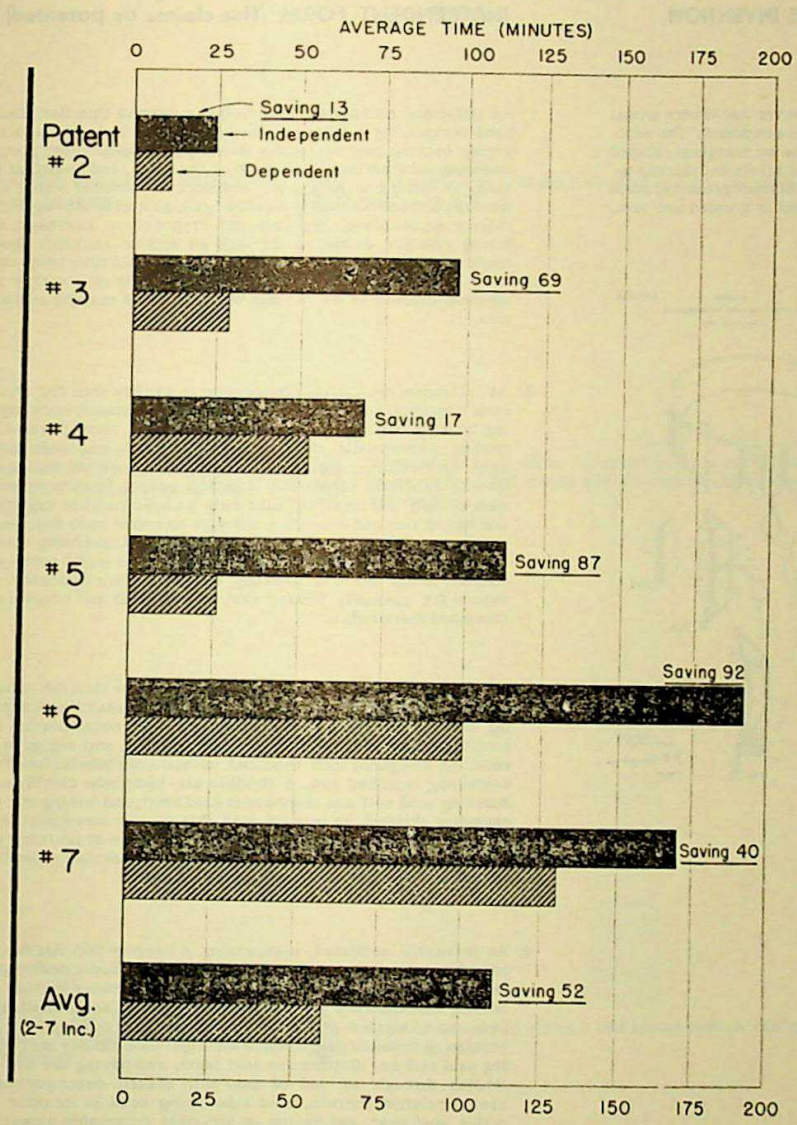
1961 SAMPLE



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 13

CLAIM ANALYSIS



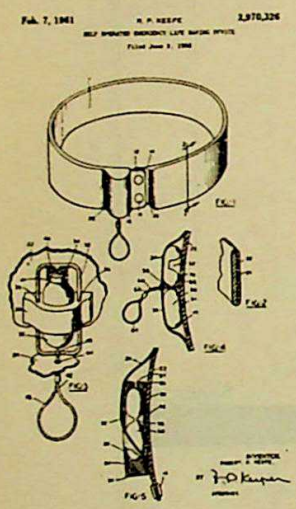
Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 14

CLAIM FORM: INDEPENDENT vs. DEPENDENT

THE INVENTION

A life preserver that is worn around the neck as a neckband. The neckband houses an hourglass–shaped gas cell that breaks and thereby inflates the neckband preserver when the neckband is grasped and bent.



INDEPENDENT FORM (The claims as patented)

1. An inflatable neckband, comprising a narrow thin flat tubular band comprising a relatively heavy flexible inelastic neck engaging backing portion, and a thin highly elastic outer portion extending substantially the length of the band, and sealed at its ends, an elongated hourglass shaped cell mounted within said tubular band and containing liquified gas, a flexible air-tight tube closely surrounding said cell and disposed in said band, and having one end extending through an end of said thin elastic outer portion in sealed relation thereto, said tube being open at its other end within said band, and having an air-tight removable closure in its one end whereby cells may be replaceable.

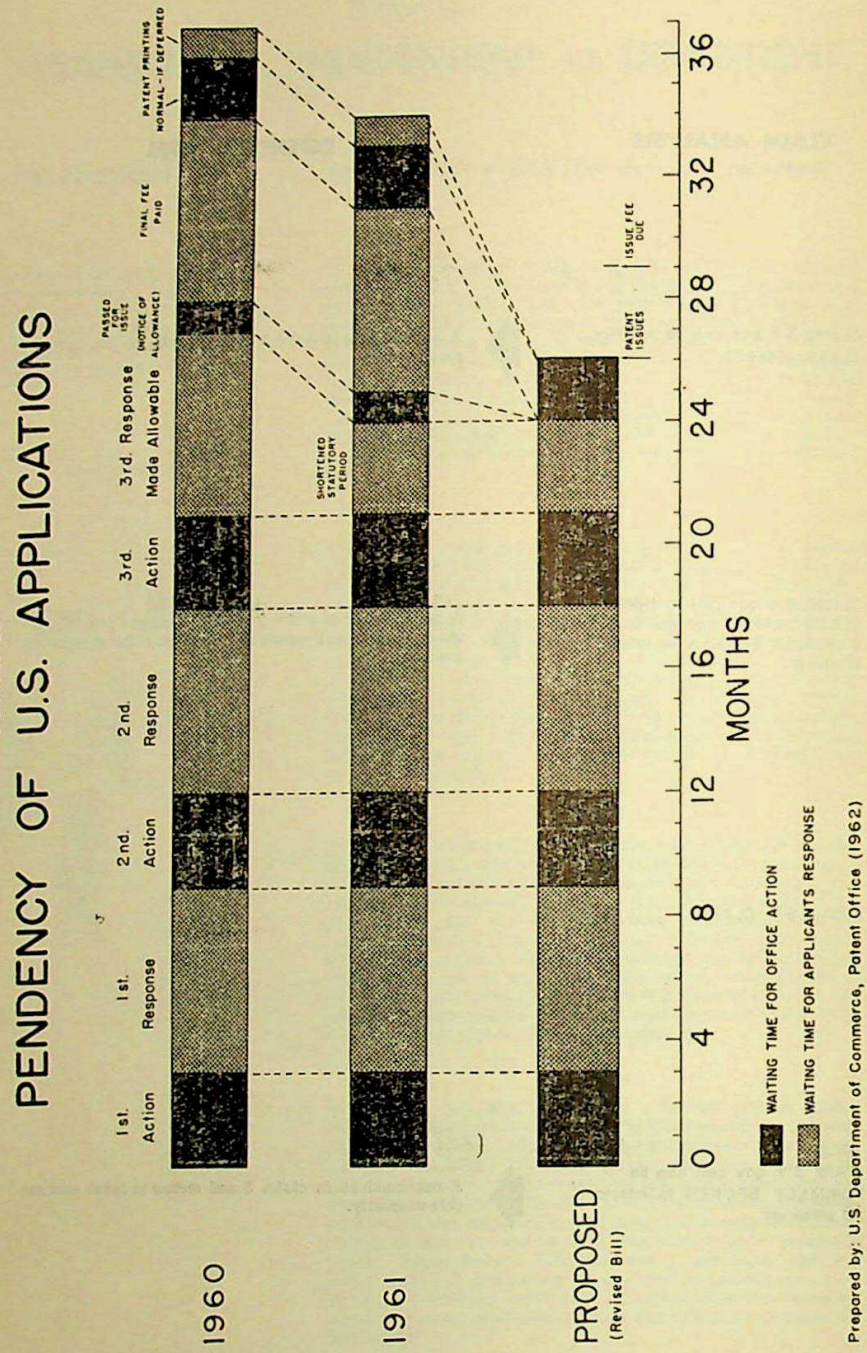
2. An inflatable neckband, comprising a narrow thin flat tubular band comprising a relatively heavy flexible inelastic neck engaging backing portion, and a thin highly elastic outer portion extending substantially the length of the band, and sealed at its ends, an elongated hourglass shaped cell mounted within said tubular band and containing liquified gas, a flexible air-tight tube closely surrounding said cell and disposed in said band, and having one end extending through an end of said thin elastic outer portion in sealed relation thereto, said tube being open at its other end within said band, and having an air-tight removable closure in its one end whereby cells may be replaceable and means for manually flexing said tube to bend and break a cell contained therewithin.

3. An inflatable neckband, comprising a narrow thin flat tubular band comprising a relatively heavy flexible inelastic neck engaging backing portion, and a thin highly elastic outer portion extending substantially the length of the band, and sealed at its ends, an elongated cell mounted within said tubular band and containing liquified gas, a flexible air-tight tube closely surrounding said cell and disposed in said band, and having one end extending through an end of said thin elastic outer portion in sealed relation thereto, said tube being open at its other end within said band, and having an air-tight removable closure in its one end whereby cells may be replaceable.

4. An inflatable neckband, comprising a narrow thin flat tubular band comprising a relatively heavy flexible inelastic neck engaging backing portion, and a thin highly elastic outer portion extending substantially the length of the band, and sealed at its ends, an elongated cell mounted within said tubular band and containing liquified gas, flexible air-tight tube closely surrounding said cell and disposed in said band, and having one end extending through an end of said thin elastic outer portion in sealed relation thereto, said tube being open at its other end within said band, and having an air-tight removable closure in its one end whereby cells may be replaceable and means for manually flexing said tube to bend and break a cell contained therewithin.

CLAIM ANALYSIS	DEPENDENT FORM
CLAIM 3 + gas cell is HOUR-GLASS SHAPED	A neckband as in claim 3 in which said gas cell is hour-glass-shaped.
CLAIM 3 + gas cell is HOUR-GLASS SHAPED and can be MANUALLY BROKEN to inflate preserver	A neckband as in claim 3 in which said gas cell is hour-glass-shaped and means are provided to break said cell manually.
BROADEST CLAIM	
CLAIM 3 + gas cell can be MANUALLY BROKEN to inflate the preserver	A neckband as in claim 3 and means to break said gas cell manually.

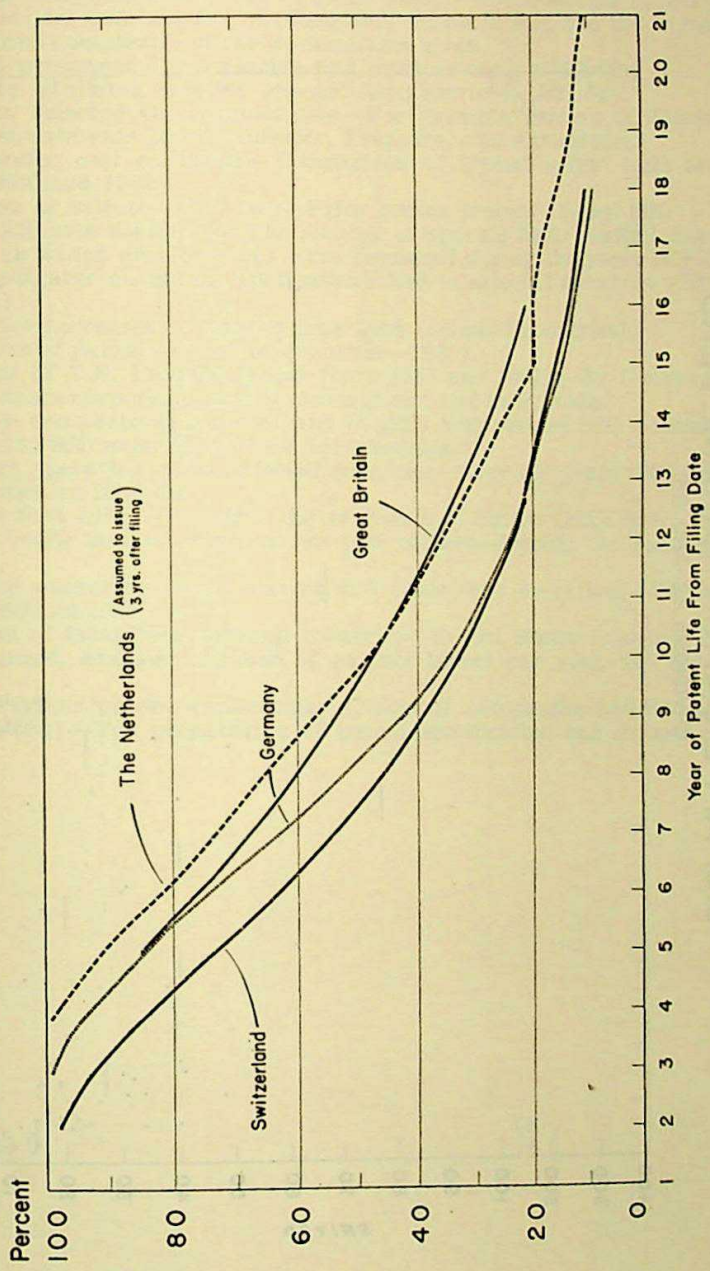
FIGURE 15



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 16

PATENT RENEWALS

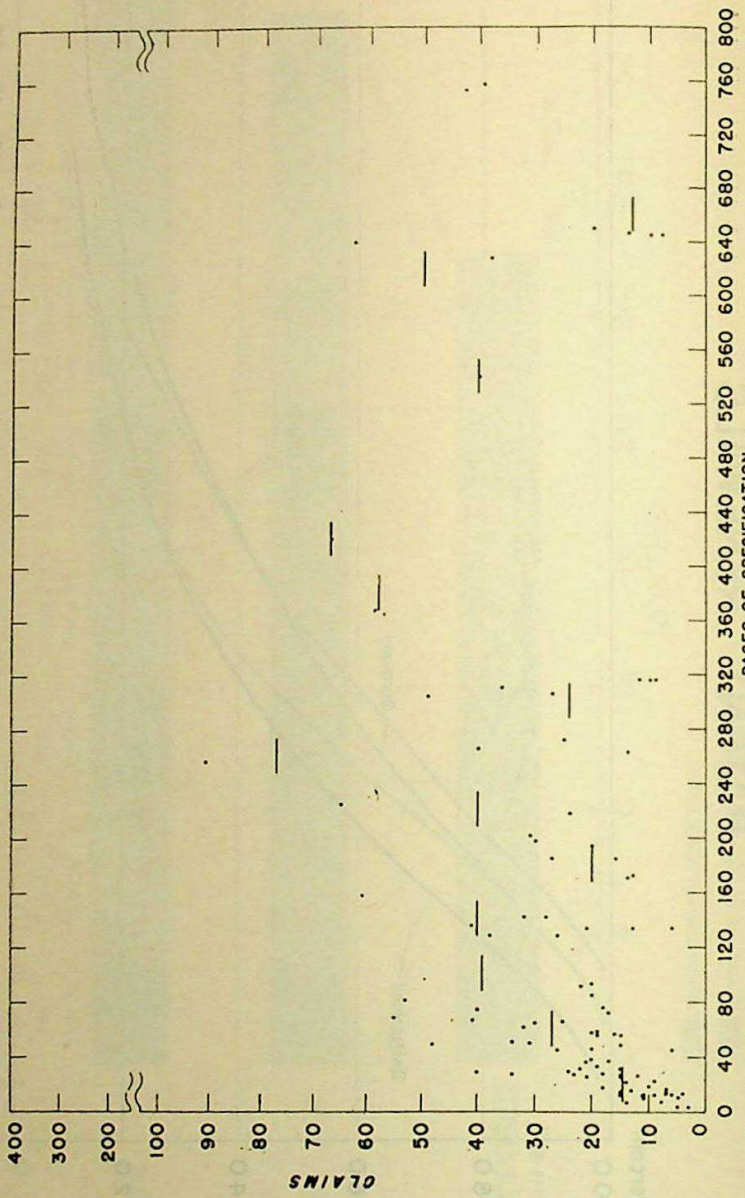


Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 17

U.S. APPLICATION PARAMETERS

(DIVISIONS 42 AND 68)



Prepared by U.S. Department of Commerce, Patent Office (1962)

Appendix B—List of Tables

Table — *Description*

1. Fee income comparison (present and revised bill)—Estimates of income from the various Patent Office fees.
2. Major cost increases since 1940 (Patent Office)—Increases due to personnel compensation and benefits, printing and reproduction, and the increasing volume and complexity of the workload are given.
3. Change in personnel compensation and printing costs (1932–62).
4. Increase in minimum fees for selected legal services (1928–62).
5. Changes in selected Government fees—For example, Bureau of Standards, AEC, Departments of the Interior, Treasury, and Agriculture.
6. Patent service cost estimates—Comparison of typical patent legal fees in 1937, 1959, and 1962.
7. Comparison of selected U.S. fees—Prior versus present revised bill.
8. Board of Appeals Statistics—The number of appeals filed, pending, disposed of, and in which oral hearings were requested during the years 1957–61.
9. Per capita figures on patent applications filed in selected countries (1956–60 average).
10. Effect of fee increases on applications filed (selected countries).
11. Average size of patents (selected countries—1961).
12. Assignment of U.S. Patents (fiscal years 1955 and 1961)—By U S. corporations, foreign corporations, U.S. Government, and individuals.
13. Fee income comparison (present and S. 2225 and revised bill)—Estimated incomes in 1961 under each of the fee schedules.
14. Income and operating costs, selected countries—Over the years 1950–60 and the average for 1930–39.
15. Income by fees (1957–61)—For the various U.S. Patent Office fees.
16. Operating costs and employment by cost centers—During the fiscal years 1952–61.
17. Income and operating costs—Patent and trademark operations—For fiscal years 1960 and 1961.
18. Comparison of total fees, selected countries—United States compared as to fees charged, average number of patents issued per year, and term of patent.
19. Bids on overflow patent applications (National Aeronautics and Space Administration)—For preparation of patent specification and claims.

TABLE 1.—*Fee income comparison (present and revised bill)*

Description (section and item of revised bill)	Present fee	Estimated income, fiscal year 1962	Proposed fee, revised bill	Estimated income, 1962 basis	Change from present fee income
		Thousands		*Thousands*	*Thousands*
Patent filing, original patent (sec. 1, item 1)	$30	$2,440	$40	$3,320	
	$1 each claim over 20	46	$2 each claim over 10	332	
			$10 each independent claim over 1	1,660	
Subtotal		2,486		5,312	+$2,826
Patent issue, original patent (sec. 1, item 2—part).	$30	1,510	$40	1,872	
	$1 each claim over 20	10	$10 each page of specifications as printed	1,685	
			$2 each sheet of drawing	187	
Subtotal		1,520		3,744	+2,224
Patent issue, reissue patent (sec. 1, item 2—part).	None		$40	8	
			$10 each page of specifications as printed	7	
			$2 each sheet of drawing	1	
Subtotal				16	+16
Design filing (sec. 1, item 3a)	$10 for 3½ years	21	$20	100	
	$15 for 7 years	6			
	$30 for 14 years	75			
Subtotal		102		100	−2
Design issue (sec. 1, item 3b)	None		$10 for 3½ years	1	
			$20 for 7 years	6	
			$30 for 14years	77	
Subtotal				84	+8
Patent filing, reissue patent (sec. 1, item 4)	$30	6	$40	8	
	$1 each excess claim over 20	(1)	$2 each excess claim over 10	(1)	
			$10 each excess independent claim	3	
Subtotal		6		11	+5
Patent disclaimer (sec. 1, item 5)	$10	1	$15	1	(1)
Patent appeal (sec. 1, item 6)	$25	250	$100 with oral hearing	300	
			$50 without oral hearing	50	
			$25 if withdrawn	150	
Subtotal		250		500	+250
Patent petition to revive (sec. 1, item 7—part)	$10	7	$15	11	+4
Patent petition for delay of issue fee (sec. 1, item 7—part).	$10	2	$15	3	+1

Patent certificate, sec. 255 or 256 (sec. 1, item 8)	$10	4	$15	6	+2
Patent copies (sec. 1, item 9)	25 cents, except designs	1,504	25 cents, except designs	1,529	
	10 cents for designs	5	10 cents for designs	5	
	$50 annual for libraries	1	$50 annual for libraries	1	
			$1 for large ones and plant patents in color	15	
Subtotal		1,510		1,550	+40
Recording patent assignments (sec. 1, item 10)	$3 for 6 pages	180	$20 each item	1,600	
	$1 each 2 pages over 6	1			
	50 cents each extra item	10			
Subtotal		191		1,600	+1,409
Trademark filing (sec. 3, item 1)	$25	588	$35	832	+235
Trademark affidavit (sec. 3, item 3)	None		$10	150	+150
Trademark petition to revive (sec. 3, item 4)	do		$15	2	+2
New trademark certificate (sec. 3, item 7)	$10	2	$15	3	+1
Trademark certificate of correction or amendment (sec. 3, item 8).	$10	2	$15	3	+1
Trademark disclaimer (sec. 3, item 10)	$10	(1)	$15	(1)	(1)
Recording trademark assignments (sec. 3, item 12).	$3 for 6 pages	10	$20 each item	264	
	$1 each 2 pages over 6	(1)			
	50 cents each extra item	5			
Subtotal		15		264	+249
Patent maintenance (sec. 8)	None		$100 1st fee, prior to end of 5th year	2,247	
			$200 2d fee, prior to end of 9th year	2,129	
			$300 3d fee, prior to end of 13th year	1,370	
			$25 for delayed payment of a maintenance fee.	4	
Subtotal				5,750	+5,750
Other fees not changed		1,014		1,051	+37
Total		7,700		20,984	+13,284

[1] Less than $500.

NOTES

1. Estimated income from H.R. 10966 includes amounts applicable to other Government agencies under sec. 2 ($293,000).
2. Estimated amounts for trademark affidavits and patent maintenance are included to show the resulting income if all the provisions were in full operation during 1962. However, fees for these items would not be effective immediately to bring in receipts.
3. Major volume assumptions for revised bill fees (1962 basis) patent filing, original patent: 83,000 applications with average of 2 claims over 10 and 2 independent claims over 1 (average combined fee, $64). Patent issue, original patent: 52,000 patents, less 10 percent forfeitures, with average of 3.6 pages of specifications and 2 sheets of drawings (average combined fee, $80). Design filing: 5,000 design applications. Design issue: 3,000 design patents, 5 percent for 3½ years, 10 percent for 7 years, 85 percent for 14 years. Patent appeals: 10,000 appeals, 30 percent considered with oral hearing, 10 percent considered without oral hearing, 60 percent withdrawn. Recording patent assignments: 80,000 items (patent, application, or any other paper) involved in 60,000 writings. Trademark filing: 23,500 applications. Trademark affidavit: 15,000 affidavits. Recording trademark assignments: 13,200 items (trademark registration or any other paper) involved in 3,300 writings. Patent maintenance: First fee, 22,470 patents (50 percent of 1957 issuances of 44,949), 2d fee, 10, 643 patents (25 percent of 1953 issuances of 42,471), 3d fee, 4,567 patents (15 percent of 1949 issuances of 30,446).

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 2.—*Major cost increases since 1940 (Patent Office)*

Note: Costs were relatively stable from 1932 to 1940. During this period, income from fees averaged about 95 percent of operating costs.

PERSONNEL COMPENSATION AND BENEFITS

Salary and related benefits for employees now comprise about 80 percent of total operating costs. Since 1940, there have been eight general increases in basic compensation of classified employees:

	Percent
1. Federal Employees Pay Act of 1945 (Public Law 79-106), effective July 1, 1945	14
2. Federal Employees Pay Act of 1946 (Public Law 79-390), effective July 1, 1946	14
3. Federal Employees Salary Act of 1948 (Public Law 80-900), effective July 11, 1958	9
4. Classification Act of 1949 (Public Law 81-429), effective October 30, 1949	3
5. Classification Act of 1949, Amendments (Public Law 82-201), effective July 8, 1951	10
6. Federal Employees Salary Increase Act of 1955 (Public Law 84-94), effective March 13, 1955	7.5
7. Federal Employees Salary Increase Act of 1958 (Public Law 85-462), effective January 12, 1958	10
8. Federal Employees Salary Increase Act of 1960 (Public Law 86-568), effective July 10, 1960	7.5
Also, the following legislation requiring employer contributions from operating funds for employees group life insurance, retirement, and health benefits has added costs which, in relation to personnel compensation, amount to	7.5
1. Federal Employees Group Life Insurance Act of 1954 (Public Law 83-598), effective August 29, 1954	.3
2. Civil Service Retirement Act Amendments of 1956 (Public Law 84-854), effective July 14, 1957	6.5
3. Federal Employees Health Benefits Act of 1959 (Public Law 86-382), effective July 10, 1960)	.7

The combined cumulative effect of these changes in compensation and benefits has been to increase the 1940 basic cost rates by an average of about 120 percent. Other increases in average salary and related employee benefits are attributable

to progressive changes in position structure since 1940, consistent with Civil Service regulations. The largest single factor has been the effect of improved promotional oportunities for professional members of the staff.

The average salary for Patent Office employees in 1940 was approximately $2,600 per annum. Today the average of salary and benefits amounts to about $8,100 ($7,500 salary and $600 benefits), an increase of about 210 percent.

PRINTING AND REPRODUCTION

Printing and reproduction costs now comprise about 15 percent of total operating costs. The largest element of printing costs (over 70 percent) involves specifications of patents. The rate per page for printing of patent specifications was $4.41 in 1940; today it is $14.75, an increase of 235 percent.

To print the specifications and drawings, and to publish the issuance in the Official Gazette, the average patent of today costs about $63. At 1940 prices, the cost would be about $19. The increase in cost amounts to $44, or about 230 percent.

GENERAL

In addition to the very substantial increases since 1940 in the cost rates for personnel compensation and benefits and for printing and reproduction (together comprising 95 percent of total operating costs), a very significant increase in total cost of operations is attributable to the ever-increasing complexity of applications and the enlarging search task facing the examiners in considering and disposing of applications. In 1940, an examiner was able to dispose of about 120 patent applications, on the average, in a year's time. Now the average is about 80, a decrease of one-third in productivity. This in itself, is equivalent to an increase of 50 percent in the cost of doing the same quantity of work.

The remaining major factor affecting the change in total operating costs since 1940 is the increase in quantity or volume of work. Principal indicators of the greater volume of work today include an increase of over 25 percent in the nuber of patent application disposals, nearly 25 percent in the number of patent issuances, over 50 percent in the number of printed copies furnished, over 150 percent in the number of certificates prepared, and nearly 300 percent in the number of pages of records reproduced and furnished. As compared with about 62,000 patent applications filed during 1940, the rate is now nearing 85,000 per year, an increase of 37 percent in annual intake. As compared with about 116,000 patent applications pending disposal in 1940, there are now about 200,000, an increase of 72 percent in total workload.

TABLE 3.—*Change in personnel compensation and printing costs (1932–62)*

Fiscal year	Operating cost (in thousands of dollars)				Average employment	Average compensation and benefits	Printing price per page			Average patent application disposals por examiner
	Personnel compensation and benefits	Printing and reproduction	Other	Total			Patent specifications	Patent drawings	Official Gazette	
1932	3,460	1,657	198	5,315	1,428	$2,423				167
1933	3,033	1,486	70	4,589	1,408	2,154				161
1934	2,761	1,050	66	3,877	1,345	2,053				135
1935	3,100	975	79	4,154	1,293	2,398				119
1936	3,331	1,013	103	4,447	1,325	2,514	$5.05	$0.55	$6.40	113
1937	3,377	1,027	88	4,492	1,353	2,496	5.05	.50	6.40	107
1938	3,378	1,008	91	4,477	1,351	2,500	5.05	.47	6.40	112
1939	3,534	1,001	81	4,616	1,370	2,580	4.41	.49	6.40	128
1940	3,557	1,010	96	4,663	1,364	2,608	4.41	.45	6.40	120
1941	3,625	994	126	4,745	1,368	2,650	4.41	.49	5.50	120
1961	18,816	3,720	1,123	23,659	2,301	8,177	14.75	1.64	11.95	79
1962 operating budget	19,922	3,922	901	24,745	2,400	8,300	14.75	1.74	11.95	79

TABLE 4.—*Increase in minimum fees for selected legal services (1928 versus 1962)* [1]

Service	Minimum fee, 1928	Minimum fee, 1962
Simple contract	$5	$15
Uncontested, simple divorce	75	175
Organizing a simple corporation	75	250
Lease	3	10
Handling a small estate	50	150

[1] Figures are for Wisconsin, and were furnished by the State Bar of Wisconsin.

TABLE 5.—*Changes in selected Government fees*

Activity	Agency	Current fee	Old fee
Registration of futures commission merchant	Agriculture	$30.00	$10.00 (1936)
Testing of eye-protective devices	Bureau of Standards	20.00	11.50 (1949)
Recording a trademark or a copyright	Treasury	75.00	25.00 (1954)
Personnel security investigations for secret clearance	Atomic Energy	385.00	305.00 (1958)
Testing of stemming devices for permissibility	Interior	1,250.00	950.00 (1957)

NOTE.—For other Government fee charges, see "User Charges—a Progress Report," issued by the Bureau of the Budget, May 1960, and Report No. 1467 of the Senate Committee on Government Operations, entitled "Fees for Government Services," 84th Cong., 2d sess., 1956.

TABLE 6.—*Patent service cost estimates*

Service	1937 [1]	1959 [2]	Present [3]
1. Preliminary search	$15–$25	$35–$60	$50–$100
2. Preparation of specification and claims (simple invention)	70–120	[4] 120–270	200–450
3. Preparation of drawings, per sheet	15–20	At least 25	25–45
4. Total legal fees (no appeals or interferences)	100–150	150–500	450–900
5. Attorney's hourly rate	At least 5	At least 20	20–50
6. Infringement study (average complexity)	50–100	[5]	250–(?)
7. Validity study	100–200	100–200	200–(?)
8. Litigation, attorney's fees per day in court	300	300	[6] 200–400

[1] Inventions and Their Management, A. K. Berle, et al. (1st ed. 1937).
[2] Inventions, Patents, and Their Management, A. K. Berle, et al. (1959).
[3] These figures were derived through conversations with experienced patent lawyers.
[4] This is taken from Inventions and Their Management, A. K. Berle et al., p. 189 (2d ed. 1947).
[5] No specific figure given.
[6] 6 hours.

Source: U.S. Dept. of Commerce Patent Office (1962).

TABLE 7.—*Comparison of selected U.S. fees*

Description	Prior	Present (date established)	Revised bill
Patent filing:			
Original application	$25	$30 (1927)	$40. $2 each claim over 10. 10 each independent claim over 1.
Reissue application	$15	30 (1861) 1 each excess claim over 20 (1953).	40. 2 each excess claim over 10. 10 each excess independent claim.
Design application		10 for 3½ years 15 for 7 years (1861) 30 for 14 years	20.
Patent issue:			
Original application	25	30 (1927) 1 each claim over 20 (1932).	40. 10 each page of specification as printed. 2 each sheet of drawing.
Reissue application			40. 10 each page of specification as printed. 2 each sheet of drawing.
Design application			10 for 3½ years. 20 for 7 years. 30 for 14 years.
Patent appeal	15	25 (1953)	100 with oral hearing. 50 without oral hearing. 25 if withdrawn.
Recording assignments	2 per 1,000 words 1 for each additional 1,000 words. 25 cents each extra item.	3 for 6 pages 1 each 2 pages over 6 (1930). 50 cents each extra item.	20 each item.
Patent maintenance			100 first fee, prior to end of 5th year. 200 second fee, prior to end of 9th year. 300 third fee, prior to end of 13th year. 25 for delayed payment of a maintenance fee.
Patent:			
Disclaimer		10 (1837)	15.
Petition to revive		10 (1932)	15.
Petition for delay		10 (1939)	15.
Certificate		10 (1953)	15.
Trademark:			
Filing	15	25 (1947)	35.
Affidavit			10.
Petition to revive			15.
New certificate		10 (1947)	15.
Certificate of correction		10 (1947)	15.
Disclaimer		10 (1947)	15.
Recording assignments	2 for 1,000 words	3 for 6 pages (1930) 1 each 2 pages over 6 50 cents each extra item.	20 each item.

TABLE 8.—*Board of Appeals statistics*

	Calendar year				
	1957	1958	1959	1960	1961
Appeals filed:					
New	6,269	9,564	10,040	10,787	10,855
Reconsideration	278	263	263	343	384
Oral hearings: [1]					
Appearances	1,079	1,126	506	1,478	1,329
Failure to appear (w/o prior notice)	483	364	254	751	611
Disposition:					
Dismissals [2]	565	1,005	1,144	1,149	980
Withdrawals:					
By applicant	1,650	2,685	3,387	3,528	3,618
By office	923	1,315	2,217	2,303	2,180
Decisions	2,155	2,203	2,870	2,860	3,811
Reconsideration	279	256	264	325	352
Appeals pending: [3]					
On Board docket	4,406	5,039	6,254	6,750	7,380
Total	6,049	8,081	9,530	10,199	10,662

[1] An oral hearing is requested in approximately 60 percent of all appeals filed. For those cases not totally withdrawn (approximately 40 percent of all appeals filed) the request for oral hearing is withdrawn about 25 percent of the time, and often occurs 1 or 2 days before a scheduled hearing. All appeals for which requests for oral hearing are not withdrawn are formally docketed for the hearing. In approximately 33 percent of these docketed appeals, there is a failure to appear without prior notice.
[2] Usually caused by appellant's failure to file a brief or a reply brief.
[3] At June 30 of year indicated.

TABLE 9.—*Per capita figures on patent applications filed in selected countries (1956–60 average)*

	Number of applications [1]	Population in thousands [2]	Ratio
Switzerland	13,615	5,185	2.63
Sweden	12,212	7,415	1.65
Austria	8,936	7,021	1.27
Belgium	10,925	9,053	1.21
Norway	3,860	3,526	1.09
Denmark	4,722	4,500	1.05
Germany	54,932	54,373	1.01
Netherlands	11,264	11,221	1.00
France	32,366	44,500	.73
United Kingdom	[3] 31,738	51,680	.61
United States	[4] 76,752	173,260	.44
Italy	[5] 20,649	48,635	.42
Japan	37,998	91,760	.41

[1] Includes applications filed by foreigners.
[2] 1958 estimates.
[3] Complete specifications only.
[4] Excludes designs and reissues.
[5] 4 years only.

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 10.—*Effect of fee increase on applications filed (selected countries)*

Country	Number of applications filed									
	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
Germany	55,457	58,561	60,202	59,317	[1] 54,778	53,452	52,988	54,492	56,610	57,119
Great Britain	22,694	22,256	24,368	26,629	[2] 28,658	29,136	29,611	30,878	33,653	35,412
Sweden	11,243	11,369	[3] 11,708	12,133	11,838	--------	11,859	[4] 12,174	12,304	12,744
Switzerland	11,765	12,131	13,177	13,781	14,144	[5] 12,666	13,124	13,616	14,606	14,664
The Netherlands	8,139	8,592	9,053	9,646	9,607	10,075	[6] 10,330	11,038	12,247	12,629

[1] Fees raised in 1955.
[2] Fees raised in mid-1955.
[3] Fees raised on July 1, 1953.
[4] Fees raised in fall 1958.
[5] Fees raised Jan. 1, 1956.
[6] Fees raised in 1957.

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 11.—*Average size of patents (selected countries, 1961)*

	United States	Great Britain	Germany
Printed pages of specification [1]	3.70	2.75	2.16
Sheets of drawing	2.00	1.70	1.32
Independent claims	4.38	2.70	1.02
Total claims	6.73	9.50	4.70

[1] The printed pages of the British and German patents have been converted to equivalent pages of U.S. patents in accordance with the following: 1st page of U.S. patent equals 1.91 British pages and 1.87 German pages; other page of U.S. patent equals 1.38 British pages and 1.13 German pages.

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 12.—*Assignment of U.S. patents* [1] *(fiscal 1955 and 1961)*

Entity	1955 (percent)	1961 (percent)
U.S. corporations	52.85	59.67
Foreign corporations	5.73	10.26
All corporations	58.58	69.93
U.S. Government	2.27	2.72
Individuals	39.15	27.35
Total	100.00	100.00

[1] Excludes reissue, plant, and design patents.

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 13.—*Fee income comparison (present and S. 2225 and revised bill)*

Description (section and item of revised bill)	Present fee	Estimated income, fiscal year 1962	Proposed fee, S. 2225	Estimated income, 1962 basis	Proposed fee, revised bill	Estimated income, 1962 basis	Change from present fee income	
							S. 2225	Revised bill
		Thousands		*Thousands*		*Thousands*		
Patent filing, original patent (sec. 1, item 1).	$30	$2,440	$40	$3,320	$40	$3,320		
	$1 each claim over 20	46	$2 each claim over 10	332	$2 each claim over 10	332		
					$10 each independent claim over 1.	1,660		
Subtotal		2,486		3,652		5,312	+$1,166	+$2,826
Patent issue, original patent (sec. 1, item 2—part).	$30	1,510	$50	2,600	$40	1,872		
	$1 each claim over 20	10	$2 each claim over 10	104	$10 each page of specifications as printed.	1,685		
					$2 each sheet of drawing	187		
Subtotal		1,520		2,704		3,744	+1,184	+2,224
Patent issue, reissue patent (sec. 1, item 2—part).	None		None		$40	8		
					$10 each page of specifications as printed.	7		
					$2 each sheet of drawing	1		
Subtotal						16		+16
Design filing (sec. 1, item 3a)	$10 for 3½ years	21	$20 for 3½ years	42	$20	100		
	$15 for 7 years	6	$30 for 7 years	12				
	$30 for 14 years	75	$40 for 14 years	100				
Subtotal		102		154		100	+52	−2
Design issue (sec. 1, item 3b)	None		None		$10 for 3½ years	1		
					$20 for 7 years	6		
					$30 for 14 years	77		
Subtotal						84		+84
Patent filing, reissue patent (sec. 1, item 4).	$30	6	$40	8	$40	8		
	$1 each excess claim over 20.	(1)	$2 each excess claim over 10.	(1)	$2 each excess claim over 10	(1)		
					$10 each excess independent claim.	3		
Subtotal		6		8		11	+2	+5

See footnote at end of table, p. 93.

TABLE 13.—*Fee income comparison (present and S. 2225 and revised bill)*—Continued

Description (section and item of revised bill)	Present fee	Estimated income, fiscal year 1962	Proposed fee, S. 2225	Estimated income, 1962 basis	Proposed fee, revised bill	Estimated income, 1962 basis	Change from present fee income	
							S. 2225	Revised bill
		Thousands		*Thousands*		*Thousands*		
Patent disclaimer (sec. 1, item 5)	$10	$1	$10	$1	$15	$1		(1)
Patent appeal (sec. 1, item 6)	$25	250	$50	500	$100 with oral hearing $50 without oral hearing $25 if withdrawn	300 50 150		
Subtotal		250		500		500	+$250	+$50
Patent petition to revive (sec. 1, item 7—part).	$10	7	$10	7	$15	11		+4
Patent petition for delay of issue fee (sec. 1, item 7—part).	$10	2	$10	2	$15	3		+1
Patent certificate, sec. 255 or 256 (sec. 1, item 8).	$10	4	$15	6	$15	6	+2	+2
Patent copies (sec. 1, item 9)	25 cents, except designs. 10 cents for designs $50 annual for libraries	1,504 5 1	25 cents, except designs. 10 cents for designs $50 annual for libraries. $1 for large ones and plant patents in color.	1,529 5 1 15	25 cents, except designs 10 cents for designs $50 annual for libraries $1 for large ones and plant patents in color.	1,529 5 1 15		
Subtotal		1,510		1,550		1,550	+40	+40
Recording patent assignments (sec. 1, item 10).	$3 for 6 pages $1 each 2 pages over 6 50 cents each extra item.	180 1 10	$3 for 6 pages $1 each 2 pages over 6 50 cents each extra item.	180 1 10	$20 each item	1,600		
Subtotal		191		191		1,600		+1,409
Trademark filing (sec. 3, item 1)	$25	588	$35	823	$35	823	+235	+235
Trademark affidavit (sec. 3, item 3).	None		$10	150	$10	150	+150	+150
Trademark petition to revive (sec. 3, item 4).	None		$10	1	$15	2	+1	+2
New trademark certificate (sec. 3, item 7).	$10	2	$15	3	$15	3	+1	+1
Trademark certificate of correction or amendment (sec. 3, item 8).	$10	2	$15	3	$15	3	+1	+1
Trademark disclaimer (sec. 3, item 10).	$10	(1)	$15	(1)	$15	(1)	(1)	(1)

Recording trademark assignments (sec. 3, item 12).	$3 for 6 pages $1 each 2 pages over 6 50 cents each extra item.	10 (1) 5	$3 for 6 pages $1 each 2 pages over 6 $1 each extra item	10 (1) 10	$20 each item	264		
Subtotal		15		20		264	+5	+249
Patent maintenance (sec. 8)	None		$100, 1st fee, prior to end of 5th year.	2,247	$100, 1st fee, prior to end of 5th year.	2,247		
			$300, 2d fee, prior to end of 9th year.	3,193	$200, 2d fee, prior to end of 9th year.	2,129		
			$500, 3d fee, prior to end of 13th year.	2,284	$300, 3d fee, prior to end of 13th year.	1,370		
			$25 for delayed payment of a maintenance fee.	4	$25 for delayed payment of a maintenance fee.	4		
Subtotal				7,728		5,750	+7,728	+5,750
Other fees not changed		1,014		1,051		1,051	+37	+37
Total		7,700		18,554		20,984	+10,854	+13,284

[1] Less than $500.

NOTES

1. Estimated income from proposed legislation includes amounts applicable to other Government agencies under sec. 2 ($225,000 under S. 2225 and $293,000 under the revised bill).

2. Estimated amounts for trademark affidavits and patent maintenance are included to show the resulting income if all the provisions were in full operation during 1962. However, fees for these items would not be effective immediately to bring in receipts.

3. Major volume assumptions for S. 2225 fees (1962 basis): Patent filing, original patent: 83,000 applications with average of 2 claims over 10 (average combined fee, $44). Patent issue, original patent: 52,000 patents with average of 1 claim over 10 (average combined fee, $52). Design filing: 5,000 design applications, including effect of term extensions, 42 percent for 3½ years, 8 percent for 7 years, 50 percent for 14 years. Trademark filing: 23,500 applications. Trademark affidavits: 15,000 affidavits. Patent maintenance: 1st fee, 22,470 patents. (50 percent of 1957 issuances of 44,939); 2d fee, 10,643 patents (25 percent of 1953 issuances of 42,571); 3d fee, 4,567 patents (15 percent of 1949 issuances of 30,446).

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 14.—*Income and operating costs, selected countries*

[In millions of dollars]

Country	1930-39 average	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1957-60 average
United States:													
Income	4.269	5.448	5.504	5.378	5.620	6.055	5.872	6.547	6.830	6.939	7.347	7.435	7.122
Operating costs	4.535	11.023	11.248	12.219	12.130	11.934	11.629	14.472	16.513	19.526	20.779	21.506	19.581
Germany:													
Income	3.748	(1)	(1)	4.421	5.046	5.239	5.941	6.408	7.095	7.749	8.942	9.525	8.328
Operating costs	2.147	(1)	(1)	4.132	4.529	4.994	5.681	5.689	6.264	7.302	7.212	7.436	7.053
Great Britain:													
Income	1.823	2.624	2.596	2.710	2.747	2.898	3.606	4.200	4.250	4.446	4.732	5.370	4.699
Operating costs	1.215	1.851	2.181	2.825	3.531	3.718	4.144	4.402	5.132	5.193	5.852	6.782	5.715
Canada:													
Income	.418	.620	.680	.707	.791	1.008	1.143	1.298	1.329	1.441	1.655	1.669	1.523
Operating costs	.201	.842	.752	.829	.877	1.005	1.255	1.553	1.811	1.972	2.239	2.296	2.080
Switzerland:													
Income	.445	.663	.685	.766	.866	.922	.961	1.168	1.326	1.466	1.550	1.634	1.494
Operating costs	.210	.487	.547	.596	.633	.623	.615	.650	.764	.863	.974	1.150	.925
Sweden:													
Income	.348	.780	.965	.926	1.083	1.361	1.565	1.486	1.583	1.752	(1)	(1)	1.667
Operating costs	.277	.851	.928	1.114	1.276	1.351	1.396	1.458	1.642	1.799	(1)	(1)	1.720
The Netherlands:													
Income	.305	.699	.714	.770	.786	.661	.693	.729	1.016	1.193	1.328	1.213	1.187
Operating costs	.219	.541	.594	.632	.733	.919	1.099	1.323	1.503	1.628	1.723	1.785	1.660
Denmark:													
Income	.088	.311	.245	.267	.308	.338	.354	.397	.412	.448	.584	(1)	.481
Operating costs	.062	.234	.257	.280	.307	.333	.350	.397	.417	.433	.468	(1)	.439

[1] Not available.

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 15.—*Income, by fees, 1957–61*

	Fiscal 1957		Fiscal 1958		Fiscal 1959		Fiscal 1960		Fiscal 1961	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
Patent filing fee, including extra claims	$2,297,183	33.7	$2,299,476	33.5	$2,341,478	32.0	$2,372,169	32.0	$2,419,034	31.7
Patent final fee, including extra claims	1,353,326	19.9	1,371,666	20.0	1,502,805	20.6	1,434,962	19.3	1,368,368	17.9
Patent copies	1,328,440	19.5	1,324,841	19.3	1,395,467	19.1	1,414,959	19.1	1,503,712	19.7
Reproduction of records	459,625	6.7	486,547	7.1	587,538	8.0	638,280	8.6	722,368	9.5
Trademark filing fee	570,456	8.4	541,989	7.9	557,893	7.6	583,241	7.9	573,767	7.5
Patent appeals	142,495	2.1	192,332	2.8	238,725	3.3	249,485	3.4	245,730	3.2
Recording assignments	184,301	2.7	175,529	2.6	184,457	2.5	189,323	2.5	195,387	2.6
Design filing fee, including term extensions	89,863	1.3	89,481	1.3	94,591	1.3	96,375	1.3	92,908	1.2
Trademark renewal fee	103,602	1.5	79,718	1.2	80,122	1.1	98,032	1.3	87,503	1.2
Certification of copies	46,785	.7	48,197	.7	54,151	.7	58,805	.8	66,487	.8
Drawings and corrections	37,559	.6	56,972	.8	62,201	.8	57,613	.8	61,908	.8
Trademark copies	22,999	.3	23,755	.3	26,085	.4	31,867	.4	31,798	.4
Trademark oppositions and cancellations	31,495	.5	26,100	.4	30,490	.4	32,750	.4	29,640	.4
Subscription service for copies	23,454	.3	24,822	.4	26,571	.4	26,189	.3	28,522	.4
Title reports	23,152	.3	20,542	.3	20,590	.3	22,445	.3	24,112	.3
Special service on orders	14,113	.2	16,559	.2	15,133	.2	19,458	.3	96,639	1.3
Classified lists of patents	6,983	.1	7,826	.1	14,839	.2	9,754	.1	7,955	.1
Other fees (approximately 40 in number) less than $10,000 each	81,104	1.2	79,751	1.1	80,557	1.1	85,560	1.2	79,444	1.0
Subtotal	6,816,935	100.0	6,866,103	100.0	7,313,693	100.0	7,421,267	100.0	7,635,282	100.0
Excess of coupon sales over coupon redemption	12,920		72,418		33,501		13,881		12,916	
Total income	6,829,855		6,938,521		7,347,194		7,435,148		7,648,198	

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 16.—*Operating costs and employment by cost centers*

[Fiscal years]

	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961
Operating cost:										
Patent examining operation	$8,579,148	$8,586,891	$8,416,549	$8,164,037	$10,311,858	$11,834,828	$14,431,278	$15,287,936	$15,552,464	$17,027,067
Office of Research and Development	----------	----------	----------	----------	194,040	290,267	372,738	316,955	390,979	460,406
Board of Patent Interferences	80,443	81,602	82,767	92,760	109,522	83,293	93,473	119,429	126,475	156,660
Board of Appeals	178,381	176,866	167,518	184,299	200,819	379,883	358,048	454,530	553,914	582,168
Trademark examining operation	710,162	720,310	700,400	653,921	698,907	666,826	733,219	773,429	771,095	836,827
Trademark Trial and Appeal Board	29,030	29,136	26,876	27,840	22,614	49,481	55,626	89,312	113,583	130,087
Office of Commissioner	100,466	87,072	97,482	114,666	130,987	147,084	166,741	182,066	180,248	180,417
Office of Solicitor	78,525	79,637	84,736	91,174	99,868	126,750	150,131	176,208	194,313	237,246
Office of Administration	2,463,402	2,368,067	2,357,606	2,300,621	2,703,108	2,934,363	3,164,600	3,283,214	3,581,418	3,988,337
Office of Information Services	----------	----------	----------	----------	----------	----------	----------	18,731	41,383	49,665
Reimbursed services to other accounts	----------	----------	----------	----------	----------	1,292	2,288	115	----------	9,944
Total	12,219,557	12,129,581	11,933,934	11,629,318	14,471,723	16,514,067	19,528,142	20,701,925	21,505,872	23,658,824
Average employment:										
Patent examining operation	1,185	1,116	1,043	985	1,136	1,378	1,567	1,495	1,487	1,512
Office of Research and Development	----------	----------	----------	----------	8	10	14	20	27	36
Board of Patent Interferences	8	8	8	9	10	8	7	8	9	11
Board of Appeals	27	27	26	26	27	49	42	47	52	52
Trademark examining operation	114	112	106	98	95	95	100	95	94	95
Trademark Trial and Appeal Board	3	3	3	3	2	4	4	11	13	14
Office of Commissioner	16	14	14	16	16	16	17	17	17	15
Office of Solicitor	9	9	10	11	11	15	17	18	20	22
Office of Administration	507	488	441	403	411	461	487	484	517	540
Office of Information Services	----------	----------	----------	----------	----------	----------	----------	2	4	4
Reimbursed services to other accounts	----------	----------	----------	----------	----------	----------	----------	----------	----------	----------
Total	1,869	1,777	1,651	1,551	1,716	2,036	2,255	2,197	2,240	2,301

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 17.—*Income and operating costs, patent and trademark operations*

	Fiscal year 1960			Fiscal year 1961		
	Total	Patent operations	Trademark operations	Total	Patent operations	Trademark operations
Income:						
1. Patent filing fee, including extra claims	$2,372,169	$2,372,169	----------	$2,419,034	$2,419,034	----------
2. Patent final fee, including extra claims	1,434,962	1,434,962	----------	1,368,368	1,368,368	----------
3. Patent copies	1,414,959	1,414,959	----------	1,503,712	1,503,712	----------
4. Reproduction of records	638,280	632,159	$6,121	722,368	716,050	$6,318
5. Trademark filing fee	583,241	----------	583,241	573,767	----------	573,767
6. Patent appeals	249,485	249,485	----------	245,730	245,730	----------
7. Recording assignments	189,323	178,945	10,378	195,387	179,227	16,160
8. Special service on orders	19,458	18,599	859	96,639	91,463	5,176
9. Design filing fee, including term extensions	96,375	96,375	----------	92,908	92,908	----------
10. Trademark renewal fee	98,032	----------	98,032	87,503	----------	87,503
11. Certification of copies	58,805	51,719	7,086	66,487	58,530	7,957
12. Drawings and corrections	57,613	53,846	3,767	61,908	57,969	3,939
13. Trademark copies	31,867	----------	31,867	31,798	----------	31,798
14. Trademark oppositions and cancellations	32,750	----------	32,750	29,640	----------	29,640
15. Subscription service for copies	26,189	26,077	112	28,522	28,522	----------
16. Title reports	22,445	2,406	20,039	24,112	1,271	22,841
17. Other fees (approximately 40 in number), less than $10,000 each	95,314	75,680	19,634	87,399	67,891	19,508
Subtotal	7,421,267	6,607,381	813,886	7,635,282	6,830,675	804,607
Excess of coupon sales over coupon redemption	13,881	13,576	305	12,916	12,645	271
Total income	7,435,148	6,620,957	814,191	7,648,198	6,843,320	804,878
Percent of operating cost	35	32	75	32	30	68
Operating cost:						
Patent examining operation	15,552,464	15,552,464	----------	17,027,067	17,027,067	----------
Office of Research and Development	390,979	390,979	----------	460,406	460,406	----------
Board of Patent Interferences	126,475	126,475	----------	156,660	156,660	----------
Board of Appeals	553,914	553,914	----------	582,168	582,168	----------
Trademark examining operation	771,095	----------	771,095	836,827	----------	836,827
Trademark Trial and Appeal Board	113,583	----------	113,583	130,087	----------	130,087
Subtotal	17,508,510	16,623,832	884,678	19,193,215	18,226,301	966,914
Office of Commissioner [1]	180,248	171,145	9,103	180,417	171,324	9,093
Office of Solicitor [1]	194,313	184,500	9,813	237,246	225,289	11,957
Office of Administration [1]	3,581,418	3,400,556	180,862	3,988,337	3,787,325	201,012
Office of Information Services [1]	41,383	39,293	2,090	49,665	47,162	2,503
Total operating cost [2]	21,505,872	20,419,326	1,086,546	23,648,880	22,457,401	1,191,479

[1] Distribution estimated.
[2] Excludes reimbursed services to other accounts.

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 18.—*Comparison of total fees, selected countries*

Country	Average issued patents per year	Term of patent from—		Fees (dollars)			Type of renewal
		Filing date	Issue or publication date	Filing and issue	Renewal (total)	Total	
United States:							
Present			17	60	0	60	
Proposed (average size)			17	144	600	744	Periodic
France	28,460	20		17	282	299	Annual.
Germany	25,268	18		26	2,435	2,461	Do.
Great Britain	19,563	16		22	462	484	Do.
Italy	17,080	15		9	211	220	Do.
Canada	11,366		17	60	0	60	
Belgium	9,074	20		6	609	615	Annual.
Switzerland	7,657	18		14	589	603	Do.
Japan	7,270		15	6	94	100	Do.
Spain	5,601		20	7	90	97	Do.
Australia	5,500	16		26	284	310	Do.
Sweden	4,596	17		40	710	750	Do.
The Netherlands	2,924		18	46	332	378	Do.

Source: U.S. Department of Commerce, Patent Office (1962).

TABLE 19.—*Bids on overflow patent applications (National Aeronautics and Space Administration)*

Item	Price ranges of proposals					
	A		B		C	
Preparation of documents in the form of patent specification and claims describing (from an adequate disclosure assured by us) formal patent drawings furnished by us.						
1. For mechanical and general cases:						
(a) For the 1st sheet of drawings	275	600	250	450	250	250
(b) For each additional sheet	75	75	50	150	150	150
2. For electrical and electronic cases:						
(a) For the 1st sheet of drawings	300	650	350	600	250	250
(b) For each additional sheet	100	100	100	200	150	150
3. For chemical or other no-drawing cases, subject to a mutually acceptable statement in each instance of the maximum number of pages desired in a given case:						
(a) For the 1st 12 pages of specification	300	650	350	650	250	250
(b) For each additional 4 pages	100	100	50	150	100	100

NOTE.—Separate cost of drawing preparation $35 per sheet.

Appendix C

C–1. The examining process.
C–2. Estimate of additional administrative costs relating to changes in fee structure proposed by H.R. 10966.
C–3. Estimated cost of notifying patent owners of maintenance fees under H.R. 10966.

Appendix C–1

The Examining Process

The following is an explanation of the movement of a patent application through the Patent Office. (No account is taken of interferences, examination of design applications, reissue applications and trademarks in this explanation.)

The attached figure is a flow diagram of the patent examining process, particularly with reference to those steps in the process at which various fees are collected and the impact of the provisions of the revised bill. The heavy lined boxes in the flow diagram indicate passage of an application through the examining process from the time it is filed until it is finally rejected and abandoned or appealed, or, alternatively, it is allowed and passed to issue. The dotted boxes and lines indicate optional petitions and other procedural undertakings that may occur during the prosecution of a patent application.

The typical application that arrives at the Patent Office includes one or more sheets of drawings, a specification, consisting of an introduction and a detailed description of the invention, and a series of claims setting forth the specific invention for which protection is sought. The filing fee and an oath by the applicant stating that he believes himself to be the inventor and that there are no prohibitions to his applying for or obtaining a patent, must accompany the application. Once these papers are received by the Office, the application is docketed and given a serial number and filing date, which number and date thereafter identify it during its pendency in the Office.

The application then passes through a classification operation which results in its assignment to the appropriate examining division where the examining process begins. Once the application reaches the examining division, the application is docketed and assigned to one of the examiners who, ordinarily, takes the application up in chronological order (first in, first out).

During the examination process, a series of "Office actions" by the examiner and responses or "amendments" by the applicant are exchanged. When the examiner first takes an application up to act on it, he studies the nature of the invention, and the scope of the claims. Thereafter he conducts a search of the prior art which includes U.S. and foreign patents and literature to find out what has gone before. With the best available prior art at hand, the examiner evaluates the claimed subject matter and in an Office action addressed to the applicant, he analyzes the references he thinks are pertinent to the claims submitted. He points out why certain ones of the claims are not patentable over the cited art, and also, perhaps, may allow some of the claims or indicate that some are allowable if certain changes are made.

Once the applicant receives this first Office action, he normally has 6 months in which to respond by way of an argument with or without amendment. His response normally will be one in which he makes certain changes in the claim language and/or argues the inappropriateness of the cited art. Thereafter, the examiner again takes up the application, reviews the arguments of applicant's attorney, and responds. In most cases the examiner will reapply the references he originally cited, and in a few cases he will conduct an additional search to find new references which are more pertinent to the claims as amended.

When the applicant receives the second Office action, he again responds (ordinarily within 6 months), perhaps conceding the propriety of some part of the rejection and contraverting other parts. A number of these exchanges between the examiner and the applicant normally occur until an issue is reached, at which time the application is finally rejected or all of the claims remaining in the case are allowed. In the latter case, a notice of allowance is sent to indicate that the patent application is ready for issue. The number of these exchanges averages between three and four per application.

If all, or certain ones of the claims are finally rejected by the examiner, the applicant has 6 months in which to file a notice of appeal to the Board of Appeals if he wants to contest it, in which case the Board will review the final rejection of the examiner to determine whether it was proper. While the Board's function is judicial in nature, it is quasi-judicial in fact because its appellate function is within the Patent Office. It is not an independent judicial entity.

Unless a notice of appeal is filed within 6 months, the application is abandoned. This is indicated on the flow diagram. This is the end of the matter unless, within a reasonable time, the applicant petitions to revive the application; but he must show that the delay was unavoidable and why the Commissioner should exercise his discretion to permit a revival. A prescribed fee must accompany the petition to revive.

If instead of permitting the application to become abandoned, applicant files a notice of appeal, the appeal fee must be submitted. Within 60 days, the applicant must file his brief which is followed by an examiner's answer. The appeal may be decided on the briefs or, in addition, an oral hearing may be requested.

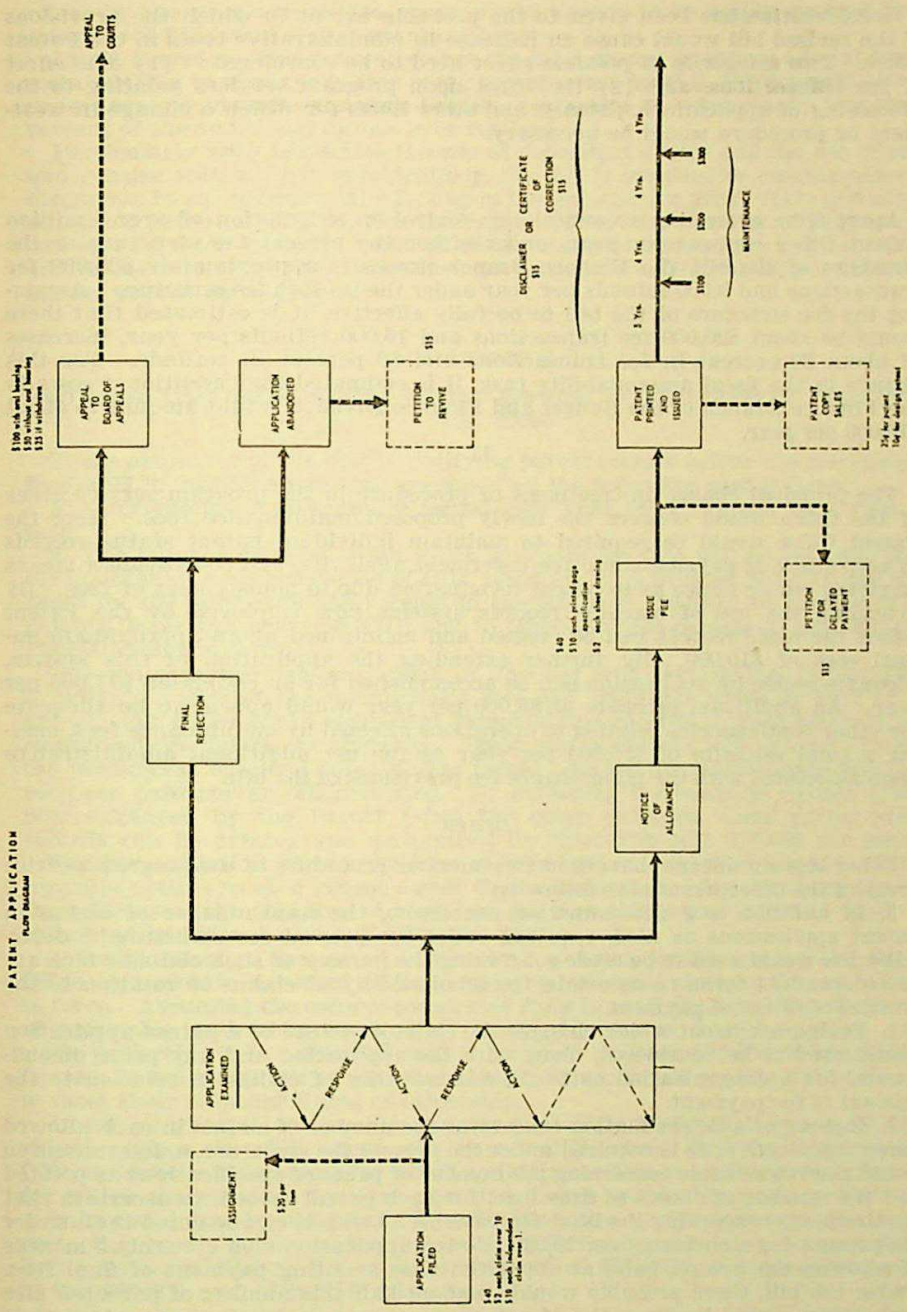
After the decision of the Board of Appeals is known and the applicant is still dissatisfied, he may either appeal to the Court of Customs and Patent Appeals or institute an original action in the U.S. District Court for the District of Columbia to seek an order requiring the Commissiioner of Patents to issue a patent to him.

If the application, instead of being finally rejected, is allowed, it is passed to issue. Within a short time thereafter a notice of allowance is mailed to the applicant, after which the applicant has 6 months within which to pay the final fee. After this fee is paid the application is prepared for printing and will issue in 30 to 60 days unless a request for deferment, up to 90 days after the date the final fee was paid, is made.

In the event the final fee is not paid within the 6-month period but a year has not elapsed from the date the fee was originally due, the applicant may petition for leave to make late payment of the final fee. If the reason for failing to make timely payment is adequate, the petition will be granted by the Commissioner. A fee must accompany such a petition.

Once the patent issues, its 17-year life begins. During the life of the patent, the owner may, if it appears necessary or desirable, file a disclaimer of certain claims, for which a fee is required. He also can petition for correction of a mistake of a clerical nature. If it was the fault of the Office, there is no charge, but if it was the patentee's fault, then a fee is required. An assignment may be recorded at any time during pendency of the application or after the patent issues.

Though the foregoing explanation is applicable to our present practice, it can be seen on the flow diagram of the attached figure that the points at which maintenance fees would fall due are indicated. Most of the fees proposed by the revised bill are also identified at their point of application.



Prepared by: U.S. Department of Commerce, Patent Office (1962)

Appendix C–2

Estimate of Additional Administrative Costs Relating to Changes in Fee Structure Proposed by H.R. 10966

Consideration has been given to the probable extent to which the provisions of the revised bill would cause an increase in administrative costs in the Patent Office. Two categories of possible effect need to be considered: (1) The effect of fee transactions, and (2) the effect upon program services relating to the processing of applications, patents, and other items for which a change in treatment or procedure would be necessary.

I

Apart from exercising accountability control on redemption of over 5 million Patent Office coupons per year, under either the present fee structure or the structure of the bill, the Finance Branch processes approximately 625,000 fee transactions and 9,000 refunds per year under the present fee structure. Assuming the fee structure of the bill to be fully effective, it is estimated that there would be about 820,000 fee transactions and 16,000 refunds per year, increases of about 30 percent in fee transactions and 80 percent in refunds. For this change in the fiscal accountability task, it is estimated that additional costs in the Finance Branch of the Budget and Finance Division would amount to about $15,000 per year.

II

The principal change in treatment or procedure in the program service areas of the Office would concern the newly proposed maintenance fees. Here the Patent Office would be required to maintain individual patent status records to keep track of payments and fee deferment affidavits, and to provide a means of giving public notice as to patent termination due to nonpayment of fees. By extending the use of machine records systems now employed by the Patent Office, the basic records can be created and maintained at an approximate annual cost of $10,000. By further extending the application of this system, adequate notice by publication can be accomplished for an estimated $17,000 per year. An additional estimate of $8,000 per year would appear to be adequate for other contingencies relating to operations affected by maintenance fees, making a total estimate of $35,000 per year as the net additional administrative costs associated with the maintenance fee provisions of the bill.

OTHER

Other less significant changes in treatment or procedure in the program service areas of the Office include the following:

1. In addition to a determination concerning the total number of claims in patent applications as filed, required under the present fee structure, a determination would need to be made concerning the number of such claims which are in independent form, to ascertain the admissibility of claims in relation to the amount of filing fee payment.
2. Each amendment which changes the claim structure of a patent application would need to be considered, along with the application and any prior amendments, for a determination as to the admissibility of claims in relation to the amount of fee payment.
3. Instead of a determination concerning the number of claims in each allowed patent application, as is required under the present fee structure, a determination would need to be made concerning the number of pages of specifications as printed and the number of sheets of drawings, for each patent issued, to ascertain that requirements concerning the issue fee have been met. It can be noted that, under the present fee structure, over 20,000 allowed application files (roughly 5 months of allowances) are on hand at any given time awaiting payment of final fees. Under the bill, there probably would be about half this number of patented files (maximum would be 3 months of patent issuances) on hand at any given time awaiting payment of the issue fees. Associating the payment of issue fees with the pertinent cases would involve procedures similar to those which are now necessary to associate the payment of final fees with the pertinent cases.
4. Upon termination of each patent appeal proceeding, a determination will need to be made concerning the portion, if any, of the appeal fee to be refunded.
5. Instead of a determination concerning both the number of pages and the number of "items" involved in one assignment "writing," as is required under

the present fee structure for both patents and trademarks, a determination concerning only the number of "items" would be needed under the bill.

Considering that some increases and some decreases of administrative effort would evolve, the collective net effect of these other changes on the operational effort in the program service areas would appear to be amply covered by an estimate of $35,000 in additional annual cost.

In all, therefore, it is estimated that the total change in annual administrative costs relating to changes in fees structure proposed by H.R. 10966 would amount to an increase of approximately $85,000, equivalent to substantially less than 1 percent of the additional income to be realized.

Particularly with respect to the use of dependent claims and the use of short and concise statement in specifications, the bill is intended to provide economic incentives to exert beneficial effect upon the substantive prosecution and examination of patent applications in the Patent Office. As a matter of judgment, it can be suggested that the value of these beneficial effects may far exceed the additional administrative costs which are estimated to be involved in administering the provisions of the bill.

Appendix C-3

Estimated Cost of Notifying Patent Owners of Maintenance Fees Under H.R. 10966

These estimates of the cost of notifying patent owners before the maintenance fees of H.R. 10966 become due are based on the following assumptions:

1. Fifty thousand patents are issued each year on which the issue fees are paid.

2. The number of patents for which maintenance fees will become due when the maintenance fee provisions of H.R. 10966 are fully in effect is 87,500 per year, based on 100 percent of the patents in the 5th year (50,000), 50 percent of the patents in the 9th year (25,000), and 25 percent of the patents in the 13th year (12,500) being in force.

The maintenance fee provisions of the bill will require the Patent Office to provide notice of the maintenance fees and their due dates as part of the patent, and to maintain individual patent status records to keep track of payments and fee deferment affidavits. These status records will be used to notify the public that specified patents have lapsed because the maintenance fees have not been paid nor an affidavit filed. By extending the machine records system now employed by the Patent Office for other purposes, these patent status records can be created and maintained for approximately $10,000 per year.

Further extension of our machine records system can generate and address separate notices to each patent owner that a maintenance fee is coming due. If the address of the patentee of record at the time the patent issued is used, the estimated additional cost is $15,000 per year.

A really effective system of notification, however, would require the Patent Office to maintain a record of ownership and address changes for all patents in force. Assuming the owners cooperated fully in notifying the Office of changes of ownership and addresses over a period of years so that the system could work perfectly, it is estimated that it will add another $20,000 to the $15,000 figure. It is appropriate to note that this procedure would require patent owners to meet their responsibilities of ownership.

As an alternative to the expensive and possibly ineffectual system of individual notices sketched above, the Patent Office could identify in the weekly Official Gazette, the patents for which maintenance fees are coming due. Patents for which maintenance fees are past due though within the grace period of 6 months could also be identified. This double notice would appear to offer ample protection to the patent owner interested in further maintaining his patent and it can be accomplished for an estimated cost of $17,000 per year as compared to the $35,000 cost of individual notices.

Senator McClellan. Senator Kefauver, will you take charge of the committee now? You may run as long as you like this afternoon.

Senator Kefauver (presiding). Will you call the next witness, Mr. Dinkins.

Mr. DINKINS. Mr. John W. Anderson, president of the National Patent Council.

Senator KEFAUVER. Mr. Anderson, we are glad to have you, sir. Will you come around, please.

STATEMENT OF JOHN W. ANDERSON, PRESIDENT, NATIONAL PATENT COUNCIL

Mr. ANDERSON. I appreciate this opportunity to speak. I was particularly interested in listening to the gentlemen who just now occupied this table and who are to a large extent the custodians of what I consider the most important American institution established under our Constitution as a stimulus to economic progress.

I regret that I must in part disagree with them, particularly as to the basis from which the problem dealt with by the legislation here proposed should be approached.

To comply with the formalities, my name is John W. Anderson.

Senator KEFAUVER. Mr. Anderson, we have your full statement, and all of it will be printed in the record.

Mr. ANDERSON. May I read the statement and interpolate here and there based upon the things that I have heard at this hearing, if that is possible. And I shall make it as brief as I think the importance of the subject permits.

Senator KEFAUVER. Very well. You may proceed in your own way.

Mr. ANDERSON. Thank you, sir.

I speak to S. 2225 in behalf of the National Patent Council of which I am the president, and of the small manufacturers of America who, since the organization of that council, have supported it.

I speak in behalf of the Anderson Co., of Gary, Ind., of which I am founder and president. My company manufactures improved and patented devices for original equipment and replacement, in the automotive field.

I speak, in the broadest sense, in behalf of the American people—of this and oncoming generations. I presume so to speak because of the clear intent of our Constitution that—

> The Congress shall have Power * * * To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

Not only does that provision of our Constitution establish clearly its intent. It is the only provision of our Constitutin that expressly directs Congress as to the means by which effect is to be given to the intent of the provision.

Back of all the smoke and dust thrown up from time to time by misguided assaults upon various features of our incentive economy, including that patent system which is its indispensable catalyst, there functions inexorably a law as basic as any other of the immutable laws by which our destiny is shaped.

Let us coin a phrase—and call it "the law of propulsion by incentive."

To build a strong nation there must be provided, and maintained persuasively, broad inducements to create and to produce.

Therefore, in seeking to understand what has made America by far the strongest nation in all history, we are led to expect within it and we

find within it the strongest and most ingenious pattern of obstructions to piracy ever devised—activating a normally diligent people having at hand adequate natural resources.

The American Indian had at his feet every natural resource out of which our Nation has built its world supremacy.

He exacted from those resources nothing beyond a hand-to-mouth subsistance.

He was therefore defenseless against the slightly more advanced equipment of the invadors who dispossessed him.

America otherwise is populated by races and nationalities migrated but yesterday from ancient foreign countries.

Some of those countries have possessed, for untold centuries, natural resources even greater than those of our Nation.

Until goaded by inventive diligence inspired in our incentive economy, those countries had made, out of those greater resources, no marked industrial progress, throughout a history infinitely longer than the comparatively short span of years elapsed since the founding of our Republic.

Wherein lies the difference?

From what has come, in America, the greater inspiration for invention and production?

Surely, the answer must be somewhat obscure—or other nations, equally ambitious, would have found it.

None of them did—completely.

May I remind you that we have in recent years the spectacle of a tremendous somewhat specialized technical development in Russia, which has never had a patent system, but which has based its phenomenal progress in great part upon a complete history of the patenting, and therefore the full public disclosure, of inventions originating in America. Russia is presumed to have today a copy of each patent ever issued by the United States. As fast as additional U.S. patents are issued Russia gets copies. Thus we see a boastful enemy honoring the superior significance of our patent system as promoting economic growth and national security.

Thus again we are reminded that our Founding Fathers, but lately removed from the follies and oppressions of other lands, laid the pattern of our Constitution and our basic law more closely to the design of eternal verities than has been the pattern of life in any country.

Immediately before you is a proposed "antipropulsion" law—S. 2225.

S. 2225 proposes that fees in the Patent Office be increased in amounts varying from 25 percent to more than 600 percent of the present fees.

Additionally, the bill calls for oppressive new fees to tax, periodically, on an ascending scale, the patent itself—on penalty of forfeiture of the patent.

S. 2225 has a harsh provision by which the owner of the patent, if through neglect or incapacity or otherwise, finds that his patent has been forfeited, can never recover it—although later it may develop that that patent has been of tremendous importance in one industry or another, and has great value.

Even the well-established case law relating to misuse of patents does not have such a "sudden death" provision in it. It merely pro-

vides that the patent cannot be enforced until the misuse has been terminated, whereupon the patent assumes its full force and is available for prosecution of infringers.

It is sometimes years before industry catches up with the invention—and wants a license, or wants to buy the patent. Punishing periodical "maintenance" fees—as has been proven in foreign systems—would only serve—and perhaps are in fact here intended—to terminate patents prematurely—without compensation to the inventor—long before the normal expiration of the patent.

The attitude of larger and richer corporations toward patents on inventions of smaller potential competitors varies with the sensitiveness of the conscience of the corporation. Some large corporations are scrupulously considerate of competing patent rights, whether as yet commercialized or not. Some large manufacturers are notorious for their hostile and destructive attitude toward competing patents.

Such large manufacturers scornfully appropriate patented inventions of smaller people, then bludgeon their way through whatever, if any, legal action the smaller fellow is able to finance.

In fact there is found in the range of attitudes toward the smaller fellow's patent rights about every conceivable category of moral and commercial integrity, or lack of it, that can be found in any other area of human activities.

It is not difficult to imagine that predatory manufacturers would be delighted to see enacted such a so-called maintenance fee provision as that of the present bill. From year to year such provision would sweep conclusively out of competition with them thousands of hard-won patents on hard-won inventions, by inventors or smaller assignees who, if permitted to live, would have an opportunity possibly to recover something for their investment in money and effort made in responding to our Nation's constitutionally projected incentives to create and produce.

Does it not seem reasonable to suggest that if this oppressive system of taxation is adopted—the act should provide that even after the patent has been suspended, the owner could reinstate it at any time, without prejudice, by paying the delinquent fees?

Surely it is not in the public interest to promote monopoly and stifle creative incentive in America—with the punishing deprivations that would follow in fields essential to our very security as a nation.

To do so clearly might sacrifice many times more potential Federal income from taxes arising from industries that might have been created by new inventions, vastly more income than could be expected from inventors or their assignees through so-called maintenance fees taxation of the patentee hoping to break through to a reward made possible by our patent system.

Usually only prosperous corporations would be able to pay such maintenance taxes. The less prosperous owner likely would default and permit confiscation of his patent. In periods of prolonged depression even normally prosperous corporations might be compelled to forfeit potentially valuable patents.

When a patent terminates, the inducement to start production of the product usually likewise terminates. It will be remembered how Government's persistent and prolonged efforts—to issue, for a few dollars each, licenses under patents presumed to be owned by Govern-

ment—failed because the licenses offered gave no protection against copyists.

Confronted with the appalling population explosion we are told is just ahead, maybe we would be wise to relieve our patent system of all its impediments, including stifling interdepartmental influences, and get more of the new industries and new employment that system has proved it can create.

This council suggests respectfully that there should be no increase in patent fees, no depressive taxation under the guise of "maintenance fees." And there should be no reluctance by Government to divert, out of the Federal Treasury, whatever funds may be needed to expand the services of the Patent Office. And, as a long overdue stimulating facility, should not Government provide whatever new and enlarged building may be necessary to house vital activities in support of constitutional incentivism motivated by our patent system?

And should we not give, to the need for funds to expand Patent Office facilities, priority over every proposed contribution to economic and military growth of foreign nations whose people may have no desire or capacity to understand—or emulate— the American incentive system that creates the wealth they seek from us.

Why promote an expanded global image of Uncle Sam as Santa Claus, while our inventors and producers must see him as a nondiscriminating and constantly hungrier tax collector?

Should we expect accelerated economic growth to result from an abandonment of the constitutional incentivism conceived and released by our Founding Fathers, and embrace instead a cold, mathematical, budgetary concept of our patent system?

Enactment of S. 2225 would have at once a discouraging effect upon our inventors and upon those who help finance their inventions. Such an act surely would tend to dry up the sources of invention—thus reducing sources of tax income normally arising out of patents and their use. Worse—it would at the same time weaken our capacity for national defense.

Patent Office fees are but a small part of the monetary return to the Government from inventions protected by patents. Every patented invention is a potential source of important revenue to Government through increased employment, and through taxes on incomes of new enterprises created to exploit such patented inventions.

We are often reminded of stories of the origin and development of prominent industries in America. Back of most of those stories is an invention that somebody had the courage and felt the inducement to create, to finance, to develop, until it could be put into production.

From there on, other related inventions, through diligent application to their development, built a stronger and stronger corporation giving employment to many thousands of people, and establishing sources of taxes of great importance to Government—in fact, tax income tremendously greater than the figures I have heard discussed here today in connection with comparisons of the cost of operating the Patent Office under one fee arrangement or another.

The public has been challenged more than once by National Patent Council to identify a single product of American industry—from baker's bread to building brick—that does not have embodied in it patentable, or once-patented, invention, or that has not been made

cheaper and better because of patented or patentable inventions employed in its manufacture or transportation.

That may seem like rather an astounding challenge. However, it has been made many times over the years, and no one has as yet come forward with a contrary example.

If as some convenient time you want to get an intimate reaction to what that challenge means, just begin with your kitchen at home, then go through every room in the house. Examine every device, every facility, every appliance, that adds to the comfort, security, and convenience of modern living, and note how many of them still bear the old patent marks. Possibly the patent has long since expired and the mark is omitted. But almost everything you find there, from can openers to television, has come out of that fountainhead of creative incentive which is our patent system.

What an amazing spectacle would be presented by a Congress governed by the erroneous presumption that our Patent Office is to be operated solely or partially in the interests of our inventors and their assignees—and arguing therefrom that the office should be self-supporting.

And does not amazement increase when we see the same Congress continue a program of appropriating billions of our taxpayers' dollars to strengthen the economy—and military power—of foreign nations who may or may not prove later to be our friends.

National Patent Council has long insisted that, in applying pressure to the goose that lays the golden egg, the neck should be avoided.

Please be assured that the subject bill—with its ill-advised reach for general funds—will so restrict the respiration of the "goose" as to seriously reduce our Nation's supply of creative "golden eggs."

Yes, this bill's enactment would greatly discourage contributions of American inventors to our economic strength and national security.

By so depriving our Nation of new fountainheads of creative and productive achievement, such an antipropulsion law would be certain to impair public confidence in legislative processes that permitted such ill-advised infliction of deprivations upon our children's children.

Those representing the budgetary approach to the questions here discussed have presented today an imposing book of charts, figures, and statistics apparently compiled at substantial expenditures of effort to establish facts having no relation to the basic constitutional purpose of the patent system.

While in many respects interesting, that material could easily be disastrouly misleading in the event that, among the inventors discouraged by enactment of the subject bill, there were to be a single Edison, Bell, or other similarly endowed creative citizen.

If I may impose for just a few more minutes, Mr. Chairman——

Senator KEFAUVER. Mr. Anderson, we will be glad to hear you. We have six more witnesses, I think.

Mr. ANDERSON. Out of deference to them, I shall make this very short.

Senator KEFAUVER. Very well.

Mr. ANDERSON. On the question of who is the beneficiary of the patent system, I want to make this suggestion.

The patentee has only a speculative interest in the patent—for 17 years only. As far as is known, Congress has not insisted upon grant-

ing to the patent owner, against his income from the patent, any depletion allowance against income taxes.

If the invention is not a good invention and never serves the public, the inventor, or his assignee, will have lost his money and effort, possibly including "maintenance fees" he may have paid.

It it is a good and useful invention that is widely manufactured and sold, the public is the perpetual beneficiary.

After 17 years, the invention is available to the public without any patent restrictions. Anybody thereafter can make it, as we all know.

The availability to the public, after 17 years, is with no time limitation. There are still in wide use in America devices that came into being because of the inducement of our patent system, the patents on which have expired several times 17 years ago. The public remains the permanent beneficiary.

It would be difficult to estimate what the Government collects in taxation of incomes from industries that would not exist today if it had not been for the inducements, the incentives, of our patent system.

I would say that on the basis of such division of benefits, it would seem that patent fees already are too high, and that so-called maintenance taxes could be classified as a form of extortion, or alternatively, as a device for the extermination of competitive patents.

We have not heard from the testimony, so far, anything about the extent to which maintenance fees, or periodical and ascending rates of taxes, in foreign countries, have served unfairly the selfish interests of large manufacturers in those countries. Those manufacturers no doubt would very much dislike to see any change in that tax system, because the system sweeps under the rug, from year to year, thousands upon thousands of patents that might otherwise have to be recognized with some sort of compensation to the man who labored long to create and/or helped finance the inventions.

We have heard here that 70 percent of the patents today are issued to corporations. That makes no reference to a very decided trend that has been going on for many years in this country, since it came about that the inventor operating independently could not always finance his operations.

So the man with talent—and I am speaking now from the experience of our own corporation—the man able to create, eager to invent, associates himself with a smaller corporation upon terms that give him a continued interest and income from whatever of his inventions it manufactures.

We have a number of such men working with our corporation. Each has, based upon our sales volume, a permanent interest in, and income from, every invention of his that becomes a part of any product that we make, or that is made by one of our licensees. And that income continues beyond his death, to his family, during the full life of the patent.

Thus we have diverted the broad incentives of the patent system to an internal apparatus that puts impetus and power into the smaller corporation.

Many small corporations operate on the same basis—corporations that afterward get larger, employ more people and pay more taxes—because of resultant creative contributions to their growth.

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Our corporation was set up in 1918. It has devoted itself for more than 40 years to the creation and production of patented inventions. Today it is a prosperous business, giving employment to about 1,200 people. It has at all times a large number of patents pending.

Small—yes. But there are so many of those smaller operations throughout the country that in the aggregate they supply a tremendous amount of the impetus that our economy gets through incentives created by the patent system.

Now, I do appreciate the time I have been given to address you.

Senator KEFAUVER. Thank you very much, Mr. Anderson. We appreciate your appearance here.

Mr. ANDERSON. Thank you again for the opportunity.

Senator KEFAUVER. I want to say that particularly, as to this maintenance fee, the size of it—I agree with a good many of the things you have said.

Thank you for coming and giving us the benefit of your views.

Mr. ANDERSON. Thank you very much. It has been a privilege.

Senator KEFAUVER. Mr. Lanham, do you want to come around and get started?

The acting chairman is delighted to have the Honorable Fritz G. Lanham with us. It was my pleasure to serve with Mr. Lanham in the House of Representatives for many, many years, where I knew him to be a fine gentleman, statesman, and legislator.

Mr. Lanham served with distinction in the House, where they have the 5-minute rule.

We will not ask you to put the 5-minute rule into effect today, Mr. Lanham, but if you can get as near to that as possible, we would appreciate it.

Before we begin, we have just had notice of a rollcall. I shall have to leave for about 10 minutes, but then I shall return.

(A short recess was taken.)

Senator KEFAUVER. The committee will resume.

Mr. Lanham, you have your statement here. It will be printed in full as if read. You may proced as you wish.

Go ahead, sir.

STATEMENT OF HON. FRITZ G. LANHAM, REPRESENTING THE NATIONAL PATENT COUNCIL

Mr. LANHAM. Mr. Chairman, I recall with great pleasure our association in the House in many years of service, and I congratulate you upon the wonderful legislative stature you have attained and how it has grown and increased in your eminent work for the betterment of our country in all its branches and in both bodies of the U.S. Congress.

Senator KEFAUVER. Well, you are mighty nice, Mr. Lanham. We appreciate a little encouragement occasionally. We get a whole lot of the other kind, as you very well know.

Mr. LANHAM. I understand that, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Fritz G. Lanham and my home city is Fort Worth, Tex.

It is my pleasure to represent the National Patent Council, a nonprofit organization of smaller manufacturers devoted to the preserva-

tion, protection, and promotion of our American patent system, which from the beginning of our Government has been one of its cherished fundamental institutions and the basis of so much of our country's progress and prosperity. It certainly behooves us to keep it true to its original beneficent purpose.

For the last 25 years of my congressional service before my voluntary retirement I was a member of the Standing Committee on Patents, Trademarks and Copyrights of the House of Representatives. That service enabled me to understand and appreciate the vital importance of our patent system in our national economy and the imperative necessity of adherence to its principles for our growth and development. The knowledge gained in that valuable experience prompts me to oppose vigorously the enactment of S. 2225 to increase the fees of our Patent Office.

In my judgment, a proper designation of this measure could well be "A bill to discourage further the activities of our creative citizens from undertaking discoveries that would promote our country's progress in science and the useful arts."

It should be borne in mind that, though the proposed increase of patent fees may be of little consequence to large corporations and patent attorneys, it is a very serious matter to many small and independent businesses that depend for successful operation upon patents discovered by small and independent inventors.

This bill indicates a misunderstanding of the primary purpose of our patent system and is based upon premises that are not tenable in keeping with that purpose. The patent system was designed to encourage and enable inventors, with as little restriction as possible, to prosecute their beneficent labors for our progressive development and prosperity. We all realize that some patent fees are necessary to prevent crackpots from interfering at will with the normal operations and activities of the Patent Office, but existing fees are adequate to assure by their payment the confidence of applicants in the merits of their discoveries.

Bills similar to the pending one have been introduced in three or four Congresses, but fortunately have failed of passage. Back in 1947, with reference to such a proposal, Mr. Thomas F. Murphy, then the Acting Commissioner of Patents, testified as follows:

> If fees are raised, we will have less applications coming in. Therefore, the small inventor, possibly, would be the one that would be squeezed out.

Representative Horan then inquired:

> What would squeeze the small inventor out?

And Mr. Murphy replied:

> The cost of filing applications. That is the thought of many. If we increase costs, then the man with little money will not be able to file applications, as he would if fees were low or if the service were free.

Let us consider that man with little money but possessed of creative ideas for our betterment. So often he goes without sufficient food and sleep to accomplish his worthy purposes. And there are many more of such inventors than you may imagine.

After all, Mr. Chairman, an inventive idea that results in a patent originates in the mind of an individual.

And these so-called small inventors with little money, gentlemen, have been the source of many of our basic discoveries. Such instances could be cited in considerable number.

For example, let me mention one such instance. I refer to the efforts and activities of the Wright brothers. All over our land they were ridiculed for attempting the supposedly impossible feat of making the flying carpet of fable become an actual fact. And when their first successful flight was reported, fewer than half a dozen leading newspapers of the country published that significant news item. But I had it from the mouth of the telegraph operator who sent out that report that many editors either telephoned in or wired asking what was the matter with that drunk telegrapher.

And yet, these small inventors so ridiculed by all made possible and practical the great aviation industry which has revolutionized many phases of the world's transportation problems and brought to our Government great amounts of revenue from industries and jobs created through the inventive service of these Wright brothers.

Do we wish to discourage the further needed efforts of such inventors to be helpful to our country's progress by diminishing their incentive as this bill proposes? The constitutional provision concerning patents was designed to protect them. It recites that the power of Congress in promoting the progress of science and the useful arts is to be exercised—How?—"by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Is it either logical or patriotic to amend the Constitution by proscribed legislative enactment to deny them that security and that exclusive right?

The pending bill, like others of its kind heretofore introduced and properly not passed, is based upon the unjustified assumption that the Patent Office should be altogether or very largely self-supporting through its fees and other charges imposed upon the inventors. As recently as 1957 the then Secretary of Commerce stated with reference to a similar bill that "The purpose of the proposed legislation is to place the Patent Office on a wholly self-sustaining basis."

As we consider this surprising suggestion, let us remember that the very great bulk of governmental revenue is derived from industries, large and small, established and jobs created through the discoveries of these patentees. Unemployment would become unbearably staggering but for that governmental income.

Now, what is the congressional and governmental attitude concerning the other Federal departments and agencies? Do we expect them to be wholly self-supporting or even largely so? You gentlemen know very well that we have no such policy and shouldn't have.

So it becomes appropriate to ask what becomes of all this revenue the Government receives through the use of patents? You know the answer as well as I do. It is passed out through appropriations to various governmental departments and agencies that exist and carry on through governmental bounty and that make no corresponding contributions to the Federal revenue.

What Government service has promoted our progress and our comfort and convenience and security like the American patent system? Through it we have made our Nation wealthy and outstanding in every character of worthy achievement. There is no avenue of American life that it has not blessed with its beneficent contributions.

But now through this bill it is proposed that we single out our Patent Office, thus so helpfully differentiated in its operations from other governmental institutions, and reduce and impair the incentive of inventors to continue to bless our land with new and useful discoveries, and thus even demote the progress of science and the useful arts.

In my judgment, the committee's prime consideration is the matter of giving assurance that American ingenuity unhampered can continue through undisturbed incentive to manifest its wholesome and progressive influence upon our American life.

Adoption of the proposals of this bill would put a brake on the valuable activities of many of those whose contributions make and keep our country great and would dilute or destroy the encouragement of the incentive to continue their arduous labors in our behalf. That seems somewhat equivalent to saying that the Government will go on playing a beneficent godfather to our citizens in general but that it will take all the toll it can from those who through their discoveries make possible the prosperity of our Government and our people.

Now let me call attention to another provision of the pending bill. It is that, in addition to the heavy expense of an applicant for patent in his labor and costly research and usually the payment of a greatly increased fee to a patent attorney to prosecute his claim, he must pay the Government what is called maintenance fees before the 5th, 9th, and 13th anniversaries of the issue date of his patent. If his patent has not been remunerative, he can keep it without such payment until the 12th anniversary and then either pay or surrender his patent 4 years before its normal expiraation.

You will note the hearings of the House Subcommittee on Patents that this provision was objected to strenuously by practically all witnesses except the proponents of the measure who endorsed it upon the ground that it would produce more revenue for the Patent Office.

Let me inquire what maintenance fees the Government is recommending for lawyers and doctors and others of many categories who carry on their useful work? The patentees pay their income taxes on what they receive, just as we do, but what logical reason can there possibly be to assess this extra income tax against these benefactors so largely responsible for all our progress?

Call it what you please, but in essence it is an unjustifiable increase in their income taxes not applicable to our citizens in general.

It may be interesting to you to observe that the House bill along this line, introduced many months after the introduction of the pending Senate bill, indicates some change of heart of the proponents of this measure about such extra income tax. The Senate bill recommends that on the 5th, 9th, and 13th anniversaries of issuance of a patent, the maintenance fees should be, respectively, $100, $300, and $500. In the later House bill they are named, respectively, $100, $200, and $300.

Maybe the thought came to the proponents that, after placing the burden of additional fees on inventors for the consideration of their applications for patents, it would be unduly unjust to keep the maintenance fee so high. Perhaps they remembered also that there is existing law to warn an inventor that, if he creates something useful for national defense, a term so comprehensive that it includes practically everything, the Government will take his discovery from him and turn it over to some contractor who had nothing to do with that discovery.

And now the adoption of the pending bill would make it still less beneficial to an inventor to carry on his useful labors. Such labors led to the undoubted erstwhile preeminence of our country, but many contend that in several important fields of discovery we are running second to a totalitarian regime. Whether or not that is true I do not know, but I do know that we cannot continue to be preeminent if we destroy the incentive of those upon whom we must depend to achieve and hold that preferred status.

In conclusion, let me cite a little Scripture which by way of reverent paraphrase seems pertinent. In the 17th chapter of First Kings we are told that in a long period of drought Elijah was admonished to dwell by the brook Cherith and to drink of the brook and be fed by the ravens. We are told in that Holy Writ, "And it came to pass after a while that the brook dried up because there had been no rain in the land."

I hope and pray that it may never be a fitting paraphrase of that Scripture to say of the work of the creative citizens of our country, "And it came to pass after a while that the source of our inventive progress dried up because there was no incentive in the land."

I thank you for your patient hearing.

Senator KEFAUVER. Mr. Lanham, it is good to see you and to have you here. We appreciate your statement very much.

Mr. LANHAM. Thank you very much, Senator. I am glad to have had the pleasure of appearing before you.

Mr. DINKINS. Mr. Chairman, our next witness is Mr. William E. Schuyler, Jr., chairman, Section of Patent, Trademark, and Copyright Law, American Bar Association.

Senator KEFAUVER. It is good to have you here, Mr. Schuyler. You proceed, sir.

STATEMENT OF WILLIAM E. SCHUYLER, JR., CHAIRMAN, SECTION OF PATENT, TRADEMARK, AND COPYRIGHT LAW, AMERICAN BAR ASSOCIATION

Mr. SCHUYLER. Mr. Chairman, I previously have identified myself. I will dispense with that and ask that my prepared statement, if it please the committee, be incorporated in the record.

Senator KEFAUVER. It will be incorporated fully in the record.

Mr. SCHUYLER. The chairman, at the outset, mentioned one or two areas in which he was interested in testimony. In that connection, he suggested that since fees had not been changed since 1932, that a change might be timely, and the American Bar Association supports that suggestion.

The association is in favor of a reasonable increase in fees, particularly in view of the changed economic condition since 1932.

The association suggests that these fees be increased, but not specific amounts, because that is within the judgment of the legislature—we would rather direct ourselves to matters of principle.

Senator KEFAUVER. Mr. Schuyler, I will have to ask that you indulge me for another recess. We have another rollcall. I will try and be back in 10 minutes again.

(A short recess was taken.)

Senator KEFAUVER. Mr. Schuyler, when we recessed, you had said that the American Bar committee felt that there should be some raises in fees, but you were not going to be specific about it.

Mr. SCHUYLER. That is right, Mr. Chairman. The American Bar Association has not gone into the amount of specific increases in fees.

Senator KEFAUVER. All right, sir. You go right ahead.

Mr. SCHUYLER. There is a recommendation that we offer, that any increase in fees should be made in a greater proportion in the issue fees than in the filing fees.

Without belaboring the record, the reason is to avoid to the extent possible any discouragement of the filing of patent applications. It is the feeling that a man is more amenable to an increase in fee when his patent is about to issue, if it has been allowed, than at the time it is filed. So the association recommends that a greater increase be made in the issue fees than in the filing fees.

Senator KEFAUVER. Does the association take a position about the maintenance fees?

Mr. SCHUYLER. Yes, Mr. Chairman.

Senator KEFAUVER. You have covered that in your statement?

Mr. SCHUYLER. The association is opposed to the maintenance fee provisions of the bill.

Would you like for me to speak on that now?

Senator KEFAUVER. Well, this is a good time.

Mr. SCHUYLER. The association opposes any fees for the maintenance of a patent right. This has been used as a source of revenue in many other countries, but has never before been adopted in this country.

It is the position of the association that fees, to the extent that they are necessary to carry the inventor's share of the Patent Office expenses, be collected from the filing and the issuing of the patent or the application for it; that a fee for the maintenance of the right is in effect putting an additional burden upon the inventor, in addition to the present tax structure, because if it is tax deductible, which is not spelled out in this act—I am not suggesting it should be—that is properly to be decided in the Revenue Act—but assuming it would be a business expense, if the patent owner is engaged in business, then the higher his tax rate, the lower would be his net payment.

In the case of a 50- or 52-percent corporate tax, the net income to the Government overall would be only 48 percent of the maintenance fee; whereas the individual or the smaller corporation would be paying a larger net to the government to maintain his patent rights.

We suggest that this is a tax, after the issuance of the patent, and should be viewed as that.

The association opposes any maintenance fee or tax, call it what we may, which is for the right to maintain a patent.

Senator KEFAUVER. Is there any question but that fees, patent fees, should be deductible on income tax?

Mr. SCHUYLER. I do not believe that an individual who is not engaged in the business of inventing can deduct it unless he has a business, so that he can deduct it as a business expense, it is not a tax. The present fees you are talking about, Senator—it is not now a tax. This is a fee such as purchasing something, and is not of benefit to the inventor. And I do not believe that would be—I am talking

about the individual inventor not engaged in the business of inventing—I do not believe it would be properly deductible now.

Senator KEFAUVER. Mr. Ladd or Mr. Federico, what is the situation if Joe Smith invents something, and he pays a fee, a filing fee, and then a fee for the issuance of his patent?

Mr. FEDERICO. I really do not know what the situation is on income tax there.

Senator KEFAUVER. No doubt a corporation that is improving its product in business would deduct the fee as part of its business expense. Lawyers' fees are deductible.

Mr. Ladd, can you give us any light on that?

Mr. LADD. I just came in, Senator Kefauver, and I am not entirely familiar with the discussion which has preceded.

I am generally familiar with the argument which revolves about the tax treatment of these fees. The argument usually is attempted both ways.

In the first place, as far as corporations are concerned, I assume that the fees would be deductible as a business expense. The argument goes, therefore, that we would not realize as much in terms of net revenue to the Government as we would if they were not.

The answer to that, it seems to me, is, my understanding being that the maximum corporate tax rate is something about 52 percent, that the balance of that at least would represent a gain.

Moreover, if it is deductible as a tax expense, it makes the counterargument that they are not as onerous on the person who pays the tax as they otherwise would be.

Now, turning to the individual, I do not know the tax treatment which would be accorded. The only question I think is whether or not it could be expensed as a deductible item, or whether it would have to be capitalized and amortized over a period of time.

Senator KEFAUVER. Well, I would ask that the very competent committee counsel ascertain the answer to that question and place it in the record.

(The material referred to follows:)

SEPTEMBER 6, 1962.

Memorandum to: Senator Estes Kefauver.
From: Clarence M. Dinkins, chief counsel.
Subject: Tax treatment of filing and issuance fees paid by an individual inventor.

It is difficult to give a precise opinion regarding this problem because of the different situations which may arise after the inventor has filed an application for a patent. These different situations may embrace such things as abandonment of the application, abandonment of the patent after issued, formation of a corporation to exploit the invention by the patentee, sale of the patent to a corporation, etc. However, the following is a general treatment of this subject:

Under U.S. Treasury Department tax regulations, I.R.S. Income Tax Regulations, section 1.167(a)-6(a), it is stated: "Depreciation of patents or copyrights. The cost or other basis of a patent or copyright shall be depreciated over its remaining useful life. Its cost to the patentee includes the various Government fees, cost of drawings, models, attorneys' fees, and similar expenditures. * * *"

It should be added that costs connected with securing a patent can only be depreciated if it is an asset used in a trade or business (sec. 1231, Internal Revenue Code). It is my understanding that if the patent is not used in a trade or business, but is subsequently sold or otherwise disposed of, the various patent costs may be used as the basis for measuring a capital gain or loss.

Senator KEFAUVER. Thank you, Mr. Ladd.

All right, you pay proceed, Mr. Schuyler.

Mr. SCHUYLER. On the matter of tax, I believe that there is a holding that in many cases the fees paid must be amortized over the life of the patent and must be treated as capital expenditures, and not business expense.

Did you have any further question on maintenance fees, Mr. Chairman?

Senator KEFAUVER. Well, what do you think about the proposal to raise the filing fee from $30 to $40, and the issue fee from $30 to $40?

Mr. SCHUYLER. I do not believe there is any quarrel with the raises which were mentioned. But there is an objection on the part of the American Bar Association to the part of the filing fee which would be attributable to what we call independent claims.

The proposed bill provides that for $40 an applicant may file one claim and nine claims dependent upon that one. If he chooses to file any additional independent claims, he would pay $10 for each one.

Under the present law, the filing fee of $30 entitles the applicant to 20 claims, either dependent or independent. And if he chooses to file 20 independent claims, he may do so for $30.

Under the proposed—I must say that most applications—I believe the Patent Office has submitted statistics—do not have the full complement of 20 claims.

But if the same inventor, under the proposed schedule of fees, filed an application with 20 claims, all independent claims, as he can now do for $30, the filing fee would be $250.

Now, the figures submitted by the Patent Office are based upon averages. In our view it is a discrimination against a man who, because his case may not lend itself to the dependent form of claim, is compelled to submit independent claims, and in such numbers that his filing fee for 20 claims could total $250, $12 more for each additional independent claim.

To avoid this discrimination, the association believes that that provision of the schedule should be modified and that a reasonable increase in the filing fee be made.

If this should be more than $40, that is something this committee and the Commissioner can best decide.

Senator KEFAUVER. All right, Mr. Schuyler.

Mr. Dinkins, do you have any questions?

Mr. DINKINS. Yes, sir. Mr. Schuyler, on this question of maintenance fees, I wanted to ask you these two questions.

If the patent turns out to be unsuccessful commercially, what would be the incentive or the reason for the owner of a worthless patent to hang onto it?

Mr. SCHUYLER. Well, we never know when a patent is worthless. You might ask why he may issue his patent today if he is not using it commercially.

The inventor is looking at the rainbow, or the pot of gold at the end of the rainbow that may be 17 years away. And if we deprive the patent owner or compel him to pay $100 at the end of 5 years, he has to make a business calculation of what his chances are of recovering something at the end, or before the 17th year, in order to reimburse him for his total of $600 in maintenance fees.

Mr. DINKINS. Then, as I understand your statement, you cannot determine, until after the expiration of the 17th year, whether the patent was really worthless or not. Isn't that the gist of your testimony?

Mr. SCHUYLER. Yes, sir. I would carry it to a very extreme point, that there is a statute of limitations of 6 years, and he might find that even after 20 years somebody had been using the invention before the patent expired and could bring suit to recover damages.

Mr. DINKINS. The reverse of my first question would be to take a patent which is highly successful commercially. Isn't the fact that the proposed maintenance fees, the amount of money that the patent owner would pay in that case, percentagewise, would be almost infinitesimal as compared with the commercial value of the patent?

Mr. SCHUYLER. I think that is so. But I think that it would add a tax that some other commercial venture would not have to pay. It would be additional to what the average commercial venture would pay.

Senator KEFAUVER. All right, Mr. Schuyler.

Do you have any other point to make?

Mr. SCHUYLER. There is one very brief point I would make on the issue fee. Again, the $40 basic issue fee certainly is not objectionable. With the addition of a $10 per page fee on the length of the specification, that discriminates against the man who is working in a complex field, who must necessarily, to make a complete disclosure of his invention, make a long disclosure.

We believe this would discourage the present practice of inventors to include in their patent application several versions of their invention—although the statute requires only one, an inventor frequently discloses several, and this inures to the benefit of the public at the end of 17 years.

If those additional disclosures are taxed, or must pay a fee of $10 per page, the lawyer will so advise his client and the number of pages may be reduced. So that at the end of 17 years, the disclosure that is open to the public is correspondingly reduced.

The other objection on the matter of the issuance is the Commissioner has indicated that if this bill is adopted, that once a patent application is allowed, it would be issued forthwith, and the issue fee would be computed after the patent has issued.

At the present time a patent application is allowed, and there is a 6-month period for the applicant to consider whether or not he is going to pay an issue fee, and he uses that time, not to make the decision about the $30 fee, but to review his patent application, to be sure that it properly covers his invention, with the claims that have been allowed, and, in addition, to file in the Patent Office additional patent applications if he has been required to divide out of the patented one certain material and must necessarily file additional applications in which to cover that additional material.

This is a procedure that is commonplace in the Patent Office. And a 6 months' period is a rather short time for the lawyer to confer with his client, to reach a decision as to the adequacy of the patent that is going to issue, and to reach a decision as to the necessity for filing additional patent applications.

This is even further complicated when the inventor resides abroad.

Under the proposed legislation, I think this period would be greatly shortened, and would be an inconvenience to the applicant without any offsetting advantage that we can see to the public.

Senator KEFAUVER. Did your committee take any action or give any consideration to H.R. 12513? That is the interference proceedings.

Mr. SCHUYLER. Senator, the matter was under consideration, but the steps necessary to take a position within the American Bar Association were not completed.

As you know, it is necessary for us to act as a section, and then obtain approval of the board of governors or the house of delegates of the American Bar Association. And that was not done in the case of that legislation.

Senator KEFAUVER. Any other questions of Mr. Schuyler?

Thank you very much for your appearance here. We appreciate it.

Mr. SCHUYLER. Thank you, Senator.

(The prepared statement of Mr. Schuyler follows:)

STATEMENT OF WILLIAM E. SCHUYLER, JR., CHAIRMAN, SECTION OF PATENT, TRADEMARK, AND COPYRIGHT LAW, AMERICAN BAR ASSOCIATION, RE S. 2225

Mr. Chairman and members of the subcommittee, my name is William E. Schuyler, Jr.

I appear before this committee on behalf of the American Bar Association in my capacity as chairman of the section of patent, trademark, and copyright law. At present the American Bar Association has over 100,000 members. Since 1955 the American Bar Association has been on record as favoring a reasonable increase in Patent Office fees. Most members of the patent bar recognize that Patent Office fees established 30 years ago should be adjusted at least to compensate for changes in monetary values. Expressions of this support for fee increases are found in the following resolutions adopted by the section of patent, trademark, and copyright law during meetings in San Francisco in early August 1962 and approved by the board of governors of the American Bar Association last week:

"*Resolved*, That the American Bar Association favors a moderate increase in patent application filing fees and a greater but reasonable increase in patent issue fees.

"*Resolved*, That the American Bar Association does not oppose a plan by which all fees of the Patent Office other than filing fees and issue fees would be increased to take into account the extent of inflation since 1932 when the present fee structure was set."

Even though an increase in filing fees for patent applications may be necessary, many members of the American Bar Association are fearful that any large increase in filing fees will discourage the filing of patent applications and thereby destroy one of the fundamental objectives of the patent laws. For that reason, among others, the first resolution suggests that any increase in patent application filing fees be moderate so the filing fee will not become a material factor for the inventor to weigh in deciding whether or not to file a patent application. So far as I am aware, the American Bar Association has never suggested the specific amount of a Patent Office fee and it does not do so now. However, if the Congress decides that Patent Office fees must be increased, the American Bar Association recommends that a greater portion of the increase be effected in issue fees rather than filing fees.

Although the American Bar Association favors reasonable increases in Patent Office fees, it is opposed to some of the innovations which have been proposed for computing those fees. I understand that this committee is interested in testimony with respect to provisions of H.R. 10966 now pending before the House of Representatives even though sections of that bill may not be equivalent to the provisions of S. 2225.

Referring to H.R. 10966, section 1, item 1, provides a filing fee of $10 for each claim in independent form which is in excess of one and $2 for each claim (whether independent or dependent) which is in excess of 10. At the present

time an inventor may file a patent application with 20 independent claims; his filing fee is $30. According to H.R. 10966 the filing fee for an identical application would be $250. H.R. 10966 would charge $10 more for filing an independent claim than for filing a dependent claim.

Disapproval of the added filing fee for independent claims is expressed in the following resolution:

"*Resolved*, That the American Bar Association disapproves in principle any establishment of filing fees which would differentiate among the different forms of claims.

"Specifically, the association disapproves those provisions of H.R. 10966 which provide for lower filing fees for dependent claims than for independent claims."

There can be no dispute with the fact that examiners require less time to act on a dependent claim than is required to act on an independent claim. Some inventions lend themselves to appropriate use of dependent claims but others do not. Large numbers of applicants presently file patent applications with dependent claims as well as independent claims thereby indicating that applicants use dependent claims where their interests are adequately protected by such claims. On the other hand, most members of the bar are of the opinion that the nature of the inventive subject matter and not the ease of examination should determine the form of claims used in patent applications. Hence, the American Bar Association opposes the proposal of H.R. 10966 which would penalize an applicant in the amount of $10 each time he uses an independent claim regardless of whether or not his invention lends itself to proper claiming by a dependent form of claim.

Item 2 in section 1 of H.R. 10966 computes issue fees on the basis of $10 for each printed page and $2 for each sheet of drawing, in addition to a basic fee of $40. Opposition of the American Bar Association to such computation of issue fees is expressed in the following resolution:

"*Resolved*, That the American Bar Association disapproves in principle the computation of issue fees for patents based on the number of pages and sheets of drawing of a printed patent."

This proposal presents practical difficulties of making it impossible to estimate with accuracy the cost to an inventor of issuing his patent. Also, it would penalize the inventor in a complex field who must necessarily describe complicated equipment as the environment for his invention. On the other hand, the patent may not be worth any more to him than a shorter patent issued to another inventor. It could tend to discourage the filing of patent applications in complex technical fields and even cause inventors to curtail the description of their inventions thereby depriving the public of one of the major benefits of the patent system.

Although the American Bar Association favors increasing issue fees more than filing fees, it opposes the computation of issue fees on the basis of the number of pages and sheets of drawing of a printed patent.

Details for the collection of issue fees, as set forth in section 4 of H.R. 10966, authorize the Commissioner of Patents to require at least partial payment of the issue fee within 3 months after the notice of allowance. Under present practice, an applicant has 6 months from the date of the notice of allowance in which to pay the issue fee (now $30). This period of time is used to review the patent application as allowed, request modification of it where necessary or file divisional applications on aspects of the invention not permitted to be claimed in the allowed application. Such matters involve correspondence between the inventor and his lawyer as well as between the lawyer and the Patent Office. Particularly where the inventor resides abroad, most of the 6-month period is required to accomplish these ends. Accordingly, a hardship would be imposed in many cases if the Commissioner required payment of part of the issue fee within 3 months from the notice of allowance, and thereupon issued the patent.

Opposition to this reduction in the time permitted for payment of the issue fee is expressed in the following resolution:

"*Resolved*, That the American Bar Association disapproves in principle any reduction in the period of time presently permitted an applicant for determining the issue date of his patent."

Finally, the American Bar Association has consistently opposed legislation which would require payment of fees or taxes for maintaining patent rights. This was expressed in the resolution adopted by the House of Delegates of the American Bar Association in 1948 and it is reaffirmed in the following resolution

adopted by the Section of Patent, Trademark, and Copyright Law in August 1962 and approved last week by the Board of Governors of the American Bar Association:

"*Resolved*, That the American Bar Association disapproves in principle any requirement of payment of any fee for the maintenance of a patent right."

Many other countries impose taxes on patents in order to maintain the patent right. H.R. 10966 (sec. 6) calls these "maintenance fees" which would be collected on certain anniversaries of the patent rather than annually. Under H.R. 10966, the inventor would pay a total of $600 in order to maintain his patent right for its full term of 17 years. This is in addition to taxes which the inventor pays on the income derived under his patent. Reasons for this position of the American Bar Association include the following:

1. Maintenance fees would discourage application for patents and the consequent beneficial dissemination of technical knowledge to the public;

2. If maintenance fees are adopted in principle they will inevitably increase in total amount with an adverse effect upon the number of patents which will issue and deprive the public of the benefit of the disclosures of such patents;

3. Wealthy individuals and profitable business would be better able to pay substantial maintenance fees which would tend to concentrate patent holdings in the hands of the wealthy;

4. Maintenance fees would result in patents expiring at the end of varying terms instead of the standard 17-year term.

On behalf of the American Bar Association I wish to express appreciation to the committee for the opportunity to present this statement. I must point out, that the official position of the American Bar Association is expressed in the resolutions quoted in my statement. My observations concerning the reasons for this position are my best interpretation of the studies, the discussions, and the debates which preceded the adoption of the resolutions by the American Bar Association.

Mr. DINKINS. Mr. Chairman, the next witness is Mr. Edward McKie, Jr.

STATEMENT OF EDWARD F. McKIE, JR., REPRESENTING THE AMERICAN PATENT LAW ASSOCIATION

Mr. McKIE. Mr. Chairman, my name is Edward F. McKie, Jr. I am a lawyer specializing in the practice of patent law, practicing in the District of Columbia.

I am also the treasurer of the American Patent Law Association and a member of its board of managers.

I appear here on behalf of that association.

The American Patent Law Association is an organization comprised of about 2,500 lawyers throughout the country who specialize in the field of patent, trademark, and copyright law.

We have a formal position on the bill before you at the present time which is summarized in a letter dated August 28, 1962, to Senator McClellan. I would ask that this be made of record.

Senator KEFAUVER. We have the letter, and it will be made a part of the record at this point.

(The letter referred to follows:)

AMERICAN PATENT LAW ASSOCIATION,
Washington, D.C., August 28, 1962.

Hon. JOHN L. MCCLELLAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MCCLELLAN: It is our understanding that on September 4, 1962, at the hearings scheduled on S. 2225, a bill to fix the fees payable to the Patent Office, the Subcommittee on Patents, Trademarks, and Copyrights of the Senate Committee on the Judiciary will consider the provisions of H.R. 10966, which is now pending before the House of Representatives. This bill was reported

favorably by the House Committee on the Judiciary and was introduced as a substitute for H.R. 7731, the companion bill to S. 2225.

Our association is strongly opposed to H.R. 10966 and we should like to submit our views for presentation at the aforementioned hearings and inclusion in the transcribed record thereof. We urge that your Subcommittee on Patents, Trademarks, and Copyrights not report favorably any bill which includes the provisions contained in H.R. 10966 for the following reasons.

A principal objection is to the part of H.R. 10966 which establishes a system of so-called maintenance fees. S. 2225 contains a similar provision. These fees are, in fact, nothing more than taxes upon patents obtained by the creative element of the American public on its inventions and discoveries and will, we fear, be a deterrent to the incentive to invent. In addition, they will introduce uncertainty into the law with respect to the term of patents by conditionally terminating or causing to lapse a patent upon which the taxes are not paid before the full 17-year term has run.

We further feel that a fee of $20 for the recording of an assignment, as set forth in H.R. 10966, is without possible justification in principle since the fee bears no relation whatsoever to the cost of performing the specific service. We specifically urge amendment of the bill in that regard.

Our association, of course, is not opposed to an increase in the fees payable to the Patent Office commensurate with 1962 prices, and our board of managers has specifically approved an increase in the filing fee to $50 and an increase in the issue fee to $75.

We trust that you will give careful consideration to our views as set forth herein.

Respectfully yours,

CHARLOTTE E. GAUER, *Executive Director.*

Mr. McKIE. I have no prepared statement other than that, but I would like to amplify our position with respect to this bill, if I may, sir.

Senator KEFAUVER. Very well, sir.

Mr. McKIE. We are in general opposed to H.R. 10966 and to S. 2225, by reason principally of the use of maintenance fees, or postissue fees, or taxes, or whatever they are denominated, in both of these bills.

Our opposition to maintenance fees is based on several grounds.

One, it is unfair to the real inventor as distinguished from the applicant who files an application for a patent on something that is not really novel or inventive.

The real inventor gives something to the public in exchange for the examination of his patent application and for the granting of a patent. He gives the public the right to use his invention after the limited time period of his exclusive right.

He also discloses to the public immediately, when a patent is granted, this inventive contribution.

Distinguished from that, the person whose application is rejected by the Patent Office and never granted, because he did not make an invention, gives nothing to the public.

Under the fee schedule proposed by this bill, the main burden of the increase in fees would be felt by the person who contributes the most as compared with the person who contributes very little, if anything.

Another objection to the bill is that the term of patents would in effect be shortened by this bill.

Certain assumptions have been made by the Commissioner in order to determine how much revenue would be obtained by the maintenance fee provisions of the bill. Those assumptions are based on foreign experience in countries which have maintenance fees and, I believe, also on certain other extrapolations.

They indicate that 50 percent of the patentees would not pay the first maintenance fee. If I understand the figures correctly, and additional 25 percent would not pay the second fee at the end of 9 years; and a further 10 percent would not pay the fee at the end of 13 years.

Then 50 percent of the patents would have their term shortened from the 17-year period that is now provided for by law, and which has been provided for many years, to 5 years. The term would also be shortened to a period not quite as short to many more patentees.

This would be done as an incident to a fee bill, primarily, rather than with a full consideration of whether the terms of patents should be shortened or not.

A further objection, one that has been referred to earlier, is with respect to the reduction in the incentive to invent and to file applications. At least two other witnesses have referred to the reduction in the incentive to invent, and I will not dwell upon that subject.

However, it is also desirable that there be an incentive to file patent applications because the applications, when issued, furnish a disclosure to the public of an invention. We believe that there is a strong possibility that this incentive would be materially reduced by reason of the fees that an applicant would have to pay.

A fee of the order of $700 in toto would be required from the average applicant here if he were to obtain and maintain his patent in force for the full 17 years. That is to be contrasted with the fee of $60 which is necessary at the present time.

One of the reasons why it is desirable that inventions be disclosed is that technological developments often proceed in steps. If one of those steps is omitted, then it is possible that the progress of technology will be interfered with in the future.

We might compare Patent Office fees to lawyers' fees, as has been by the Commissioner.

It has been indicated in his presentation that even with the increase in fees provided for by this bill, only 20 percent of the cost to the applicant would be Patent Office fees. However, under the present system, without maintenance fees, and without increased filing and final fees, an applicant has at least two alternatives to paying high lawyers' fees.

He can, of course, file his application himself. The Commissioner has indicated that a very small percentage of applicants do this. But it is a possibility at the present time. And it is thereby possible to avoid a very high fee on himself.

Under the new system, of course, he could not avoid the payment of the fees because they would be required by the Government.

A further alternative is that he can perhaps in some cases arrange a contingent relationship with his attorney, such that the attorney not charge a fee until some income is incident to the use of the patent. This, again, would not be possible under the bill, because the fees would be required by law.

A reason for the use of maintenance fees given is the clearing away of what is called dead wood.

As Mr. Schuyler has indicated, it is very difficult to determine what is deadwood. Despite the fact that many, if not most, inventions go into commercial use before patenting, there are a very substantial number that do not.

No one can determine at any one period in the life of a patent whether that invention is going to go into commercial use or not.

Moreover, if the patent is removed by the failure to file a maintenance fee, another incident to a patent is taken out of the picture, and that is the incentive to exploit.

Let us assume, for instance, that there is a patent in existence which has been issued for 5 years. This invention has not been commercially used at all. However, 3 years later, 8 years after the patent was granted, a market opens up for this, as a complete surprise to the patentee himself.

A manufacturer who might be interested in that market would also be interested in the possibility of protecting himself against the direct copyist.

That manufacturer, of course, has to expend a substantial sum of money and time in developing an invention to a commercial product, and also in developing a market for that product. Without the patent right, he would be exposing himself to the direct copyist. With the patent right, he would have the protection that would give him the incentive to supply this product.

With the maintenance fee provision, that particular patent might be abandoned, because it had no prospects of commercial use at the end of the 5-year period.

Now, it has been indicated in previous testimony that the reasons the maintenance fee provisions are in the bill are, first of all, that a determination was made that 75 percent of the cost of operation of the Patent Office should be recovered in fees. The Commissioner has indicated that if we are not for maintenance fees, we must make up our minds where the burden should be placed.

The American Patent Law Association has approved a reasonable increase in the filing and final fee. This is where the burden should be placed, in our view.

In particular, we have approved an increase in the filing fee to $50 and an increase in the issuance fee, or the final fee, to $75.

These two increases would take care, in large measure at least, of the devaluation of the dollar between the time when these fees were set at $30 and $30 respectively, and the present time.

Senator KEFAUVER. I was going to ask you how you got $50 and $75. You think that is about the amount of inflation we have had since 1932?

Mr. McKIE. It is approximately that amount. I think the Commissioner has indicated that an increase to the order of $131 would be necessary to take care of the decreased purchasing value of the dollar. This approximates $125, which is in round numbers.

However, it was the view of the American Patent Law Association that—which agrees with the view of the American Bar Association—that the filing fee should be somewhat less, and that is the reason for picking the particular figures.

The Commissioner has quoted the Bureau of the Budget in his presentation before the House subcommittee as follows:

> The policy is that in those instances where there is a dual benefit, a general public benefit and a specific benefit to an individual, that there should be some equitable distribution of the cost of operating the Government service.

We do not disagree with this determination, if it is properly applied.

An equitable distribution is the problem here.

A witness this morning, in fact a representative of the Department of Justice, has indicated that the patent system as a whole is primarily for the benefit of the American public; moreover, it should be realized what the patent grant really is, and what an inventor gives up in obtaining a patent.

Any inventor has a right to maintain his invention in confidence, in secrecy, and to protect it as well as he can in such posture; to use it as well as he can, also.

He gives that right up by disclosing the invention in an issued patent. He gives the public a possibility of the use of that invention during the 17-year period of protection, if it is not shortened.

He furthermore gives the public the free use of the invention after the end of that period.

He himself obtains only one thing—the bare right to exclude someone else, anyone else, from the use of his invention. That is only a right to exclude. It is not a right to use. He himself may be prevented from using his invention because someone else has a dominant patent covering this particular invention.

This is not a monetary reward, it is only the possibility of obtaining some monetary reward.

Under all of these circumstances, and in particular in view of Bureau of the Budget's statement which I believe is in the Commissioner's presentation, to the effect that the fees set should not seriously impair the objectives of a program, it is submitted that the fees that would be set by this particular bill are way too high. Seventy-five percent return seems inequitable, particularly when it is applied to someone who gives as much as an inventor does when he obtains a patent.

The 75-percent requirement, however, is at the heart of our difficulty here, because, in the Commissioner's view, this necessitates maintenance fees. They are said to be set in order to obtain 25 percent of the income of the patent office. If they were eliminated, we would be down to something of the order of 55 percent—that is, 55 percent recovery under the present bill if the maintenance fees were removed entirely.

Another significant factor is that the major cost of operation of the Patent Office is the existence and the operation of the examination system. The examination of patent applications itself, in one of the charts prepared for submission to the House subcommittee, amounts to 55 percent of the Patent Office budget. That examination, of course, is caused by the applicant when he files a patent application. However, the primary purpose of the examination is to prevent the exclusion of the public from the right to do something which they already have a right to do; in other words, to prevent the issuance of a patent on something that is old. That is in the public interest, at least primarily. It therefore should be paid for at least equally by the public, in my view.

We think that under all of the circumstances here, including particularly the desire not to impair the incentives that exist in the system as it presently stands, a reasonable increase to $50 in the filing fee and $75 in the issue fee would be desirable.

There is one further difficulty that we have with this particular bill, and that is with respect to assignments.

We have taken a definite position on the proposed assignment fee, which is $20, as I recall, on each item which is recorded.

There is no indication, of course, that this $20 fee is based on the cost of the service of recording the assignment. In fact, I believe it is admitted that it is far in excess of the cost.

Senator KEFAUVER. Is there an assignment fee now?

Mr. MCKIE. There is an assignment fee now, sir. It is a little bit complicated, and I do not recall it exactly. But it is based on a number of sheets of the instrument recorded, as well as on the number of items themselves that are recorded.

It is very materially less than the fee that is indicated by the present bill.

I see by section 41 of the Patent Code that the fee presently is for recording every assignment, and so forth, not exceeding three pages, $3. For each additional two or less pages, $1. For each additional patent or application included in one writing, 50 cents additional.

An illustration might be useful here.

Let us assume that a corporation, or any business entity, desires to buy a whole picture of patents, a whole ambit of technology from another entity. There may be a hundred patents involved—a hundred patents and applications.

Under the present law, they would pay something of the order of $50 for recording that assignment. Under the new one, it would be something of the order of $2,000. In fact, I think it is exactly $2,000.

It should be remembered also that the recordation of an assignment is in part required by law. Section 261 of the Patent Code says that an assignment, and so forth—

> shall be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice, unless it is recorded in the Patent Office within 3 months before its date, or prior to the date of such subsequent purchase or mortgage.

In other words, it is felt to be in the public interest that such assignments be recorded. To increase the fee to the level indicated here of course is somewhat contrary to the position of the Bureau of the Budget also, in that that policy, as I understand it, is that where there is a service rendered to the public, even if the service is primarily for the benefit of the person requesting it, the total cost of that service should be paid for by the person requesting it.

This fee would return to the Patent Office very materially more than the cost of rendering the service.

Two other features of our position are these:

Measuring the issue fees by the number of pages and number of sheets of drawings is impliedly, at least, disapproved by the American Patent Law Association when it approves a flat $75 final fee. We did not take the position strictly and expressly on that issue, but we did approve a $75 final fee.

Secondly, discriminating against independent claims by fee differentiation, that is, the bill before you would discriminate against independent claims by charging a larger fee for such claims than for

dependent claims. It was proposed that this be approved. The board of managers of the American Patent Law Association did not approve that particular resolution.

That is our submission.

Senator KEFAUVER. Thank you very much, Mr. McKie.

Mr. MCKIE. Thank you very much.

Mr. DINKENS. The next witness is Mr. Ralph D. Blakeslee.

Senator KEFAUVER. Mr. Blakeslee, we are glad to have you with us. You are representing the Patent Office Society.

Mr. BLAKESLEE. Yes, sir.

Senator KEFAUVER. We have your statement, sir.

STATEMENT OF RALPH D. BLAKESLEE, REPRESENTING THE PATENT OFFICE SOCIETY; ACCOMPANIED BY IRVING J. ROTKIN

Mr. BLAKESLEE. We wonder if, in order to save time, we could have this put in the record, sir, and just refer to it once or twice, and summarize it.

Senator KEFAUVER. Yes, indeed, it will all be printed in the record.

Mr. BLAKESLEE. For the record, I am Ralph D. Blakeslee. I am a patent examiner. I am here today as chairman of the legislative committee of the Patent Office Society.

I have with me Irving Rotkin who is a member of the executive committee of the Patent Office Society, and a member of the legislative committee. He is a patent examiner, and in addition, he is a classification examiner in the Patent Office.

Now, the professionals who operate the patent system are, broadly speaking, divisible into two groups; the first is comprised of attorneys prosecuting patent applications before the Office, and the second is comprised of patent examiners who examine the applications.

The Patent Office Society is the professional society of patent examiners; in addition it provides associate memberships for others interested in the improvement of the U.S. patent system.

The society traditionally has been reticent to advocate, as it is doing today, passage of legislation relating to the patent system. We usually make our views known within the profession by means of our journal, or by direct communication with bar associations and others interested in the patent system.

In the case of this bill, however, the patent examiners, as represented by the society, feel so strongly that the executive committee of the society passed a resolution directing the legislative committee to draft and present to your committee a vigorous statement generally supporting S. 2225 as amended, with particular emphasis on its regulatory features which are designed to encourage good practices. We feel these regulatory features are long overdue.

I would like to read a couple of sentences from the prepared staetment:

> As for the regulatory features dealing with the encouragement of dependent claim form—we speak without reservation as experts. Such encouragement is long overdue. The tremendous improvement this claim form permits in understanding, in searching, in examination and in the legal distinctiveness of the inventive concept is beyond dispute.

That means nothing more or less from the point of view of the examiner than that such claims take less time to examine, and that, therefore, proportionately less money is paid for our salaries to examine patents containing dependent claims. And it means that we should—if we were able to encourage strongly the dependent claim form—we should be able to dig more quickly into that 300,000 application backlog which we have facing us, and which we accept personal responsibility for, but have been unable to do very much about in the past.

It is appropriate to further note for your consideration that the primary examiners of the Patent Office met in a committee, independently of the Society, and said, in a document entitled "Recommendations Affecting Prosecution of Patent Applications Filed With the Commissioner of Patents," that "in order to facilitate consideration of the claims, it is recommended that the applicant be strongly urged or required to present the claims in a form convenient for the examiner to consider, such as in orderly sequences, as well as orderly internal arrangement."

The report further recommended a change in Patent Office rules to require that where claims are substantially duplicates, execept for added elements or restrictions, they should be placed in dependent form.

Now, this is the opinion of the primary examiners who, as a body, represent the people most experienced in the adjudication of patent applications before the Office. They know how much time is wasted in applications where claims are prolix and multiplied, and so on.

The society however believes that dependent claims shouldn't be forced by a rule, but that the problem should be solved as in this bill, by fees which encourage dependent claimings, but which do not make it impossible to file independent claims where they are really justified. The bill merely provides that independent claims should be paid for according to how expensive they are to examine.

That concludes our statement. We would be glad to answer any question from the examiner's point of view, if that would be helpful.

Senator KEFAUVER. Mr. Dinkins, any questions?

Mr. DINKINS. Mr. Chairman, I would like to ask Mr. Blakeslee one question.

Do you know of anything in this bill as amended that might decrease the incentive to invent?

Mr. BLAKESLEE. No, sir; I think on the contrary.

Mr. DINKINS. That is all.

Senator KEFAUVER. As I understand it, Mr. Blakeslee, your society feels that there should be some increases in fees. You didn't arrive at any particular amount, as I understand it.

Mr. BLAKESLEE. No, sir; we did not. We feel that this bill is reasonable and presents a balanced approach to the whole problem, and we support it generally. We think that its presumptions are valid.

Senator KEFAUVER. Thank you very much for coming in and being with us.

(The full statement of Mr. Blakeslee follows:)

STATEMENT OF RALPH D. BLAKESLEE ON BEHALF OF THE PATENT OFFICE SOCIETY RELATING TO THE REVISION OF S. 2225

Mr. Chairman and members of the subcommittee, the Patent Office Society is an organization devoted to promoting the professional development of examiners and the improvement of the patent system in general. Over 900 examiners and other Patent Office professionals are active members of the society.

The society supported companion bill H.R. 10966 before the House subcommittee because we felt that a substantial increase in fees was needed and that the regulatory features of the bill, which would encourage better practice before the Office, were long overdue. We still firmly believe that this is a good bill and should be supported wholeheartedly as beneficial to applicants, to examiners and to the public.

The bill represents a balanced apportionment of necessary fee increases. By splitting the increases among filing, final, and maintenance fees, the desired cost recovery is achieved without unduly burdening the independent—and sometime poor—inventor. The final fee provision, based on the number of pages of specification and drawings, would place more of the financial burden on applications requiring large amounts of examining time and also responsible for high printing costs. The appeal fees would tend to encourage earlier adjudication within the Office. The maintenance fee technique not only shifts the financial burden to a point in time best suited to a patentee's ability to pay but such fee also tends to minimize the vast number of potential infringements which face a newcomer entering any field of economic endeavor. As for the regulatory features dealing with the encouragement of dependent claim form—we speak without reservation as experts. Such encouragement is long overdue. The tremendous improvement this claim form permits in understanding, in searching, in examination and in the legal distinctiveness of the inventive concept is beyond dispute.

Patent examiners, along with every expert committee appointed in the last 50 years to investigate the operation of the Patent Office, have recognized that the dependent claim form cuts down on the time, cost, and complexity of the examining process. Some patent attorneys use dependent claims, but too many do not. The question, as we see it, is solely one of how do we encourage everyone to adopt good practices. We believe, based on the aggregate years of experience of examiners, that dependent claiming can best be brought about by making it economically advantageous to applicants, as provided in this bill.

We agree with your committee's view that the "survival of the patent system, as it now exists, is at stake." It is for this reason that we are cooperating with the Commissioner of Patents in attacking the multifold problems facing the Office, many of which are enumerated in your 1962 report. If we are to solve these problems, all employees of the Patent Office, and particularly examiners, must consider how; they must test new ideas not on the basis of "It's never been done before" but on the basis of "Can it be done?" and "Will it improve our patent system?"

As your committee is aware, the Commissioner is actively seeking answers to our problems. I believe the vast majority of examiners, and certainly the Patent Office Society, support his efforts in exploring new approaches to old problems, even though this requires additional effort from us.

If the patent examining system is to survive, willingness to work toward solution of the problems that beset it cannot be limited to the Commissioner's office and the examining corps. Applicants and attorneys who practice before the Office must be willing to approach changes from the standpoint of what these changes can do for the patent system, regardless of personal inconvenience. Neither the patent system nor the country can afford "business as usual." Examiners are changing their old ways of doing things where necessary. On the other hand, some of the criticisms of this bill by others appear to reflect more concern with personal convenience than the needs of the system.

We believe in the examining system; we believe in the patent system. Because we do, we think that this bill should be passed. It provides a reasonable cost recovery, it minimizes the impact of the increased fees on the small inventor,

it allocates some of the fees in proportion to the difficulty and expenses of examining and it encourages concise and succinct disclosures and the kind of claims which clearly and accurately define the invention for which patent protection is sought.

We urge the applicants and attorneys who practice before the Office to join with us in support of this bill—in meeting our joint responsibilities so that the American patent system can continue to grow and serve the high purpose for which it was designed.

We urge passage of this bill.

Mr. DINKINS. Mr. Chairman, our last witness is Mr. Franz Ohlson, Jr.

Senator KEFAUVER. Representing the Aerospace Industries Association of America.

Mr. Ohlson, we are glad to have you here. We have your statement, which will be printed in full in the record.

STATEMENT OF FRANZ O. OHLSON, JR., AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA

Mr. OHLSON. It was originally my intention to read portions of the statement. But in view of the hour, and the excellent presentations of other witnesses here before the committee, I shall merely put this in the record, and highlight some of the remarks that have been made before the committee today. Particuraly in those areas we believe deserve real consideration by this subcommittee.

It has been pointed out, and the Commissioner relied quite heavily on it, that the patent system purportedly is for the benefit of the patentee. This is a new and rather novel approach because I believe court decision after court decision indicates that the patent system is for the benefit of the general public. The inventor discloses his idea. He takes the fruit of his intellect, his imagination, and places it before the public. He has the right, under the common law, to protect his idea and treat it as a trade secret. It can go to the grave with him, if he so chooses, or he can practice it in secret.

Nevertheless, one of the concepts of the patent system is the incentive for the inventor to disclose, and thereby make available the knowledge of his invention to the general public, and the public thus derives a benefit.

A great deal of emphasis has been placed here today on the commercial use of inventions. Undoubtedly this forms a major incentive in our patent system. But we must not overlook nor, in considering a fee bill, forget that one of the major incentives of our patent system is the disclosure of the inventive concept.

An invention is used, not merely by building or making it. An invention is used when someone, for a small fee, secures a copy of the patent and increases his knowledge to the end that he, too, may add to that knowledge, and perhaps secure a patent, another patent. This is the way the patent system builds upon itself.

As Sir Isaac Newton said, we stand on the shoulders of our predecessors.

So I urge this committee to seriously consider whether or not the only incentive is the commercial utilization of a patent.

I would like now to summarize the Aerospace Industries Association's position with respect to both S. 2225 and H.R. 10966.

As an association, we do not object to a reasonable increase in patent fees, commensurate with increases in fees of other governmental agencies for the services rendered.

I have already covered the point, I believe, that in considering increases in patent fees, we should take into consideration the benefit to the public that the patent system has given over its entire life.

We believe that if the Patent Office fees are to be increased for the purpose of revenue, any bill so doing should be restricted to this purpose, and not to make substantive changes in patent law and procedures.

The changes that the fee bill would tend to do would be to force patentees, or their counsel, into drawing short, concise specifications. This, of course, is occasioned by the fact that you would pay a fee for the printing of the patent.

Will this succeed?

The shorter and the fewer the words you use, the more susceptible that sentence or paragraph is of misinterpretation. Therefore, if we are looking for short, concise, and succinct patent specifications, are we not shifting the burden from the Patent Office to the courts, to determine what, in fact, the invention is—because, remember, in every instance the specification is the dictionary of the claims. If there is any vagueness, any ambiguity in the claim, the parameter that marks out the invention, one must refer to the specification for clarification of such vagueness.

If the specification is unduly short, I believe there will be an increase in the work of the examiner, because then he would have to search the entire area that these rather nebulous words may cover.

In addition, the fee bill would force the use of dependent claims.

We have heard the experts of the examining corps suggest that this is an ideal thing to do. These are the examiners speaking, please recall.

In the field, there are many inventions that may not be adequately covered by independent and dependent claim forms.

In addition to this, the Commissioner has already indicated that some difficulties might exist in the event the independent claim, being the broadest, would be held invalid by a court. What then of all the dependent claims?

I think it was indicated that the patent might then be reissued.

If it is the intent of the bill to permit reissues, after 6, 7, 8, or 10 years, then the bill is not clear on this point.

We have two objections of the association to the fee bill—penalties imposed upon the patentee, or the applicant, in forcing him to go to short, concise specifications, and the problem of how he will then be able to meet the statutory requirement of explaining his invention in such clear and concise terms as anyone having ordinary skill in the art to which the invention pertains may practice the same. What is ordinary skill in the art? We must be careful when we prepare our specifications that we are, in fact, disclosing the invention so that it may be practiced. Anything else would be improper.

The association also believes that a fee bill should be nondiscriminatory.

The present fee bill, in increasing the fees for recording assignments, is aimed directly at a general corporate practice.

Normally it is a process within a corporation of obtaining an assignment of an invention from an employee and recording that assignment. Consequently, the assignment fee is aimed directly in this direction of this normal procedure. It is quite necessary for a corporation to do this, because in order to prosecute the application, there are times when showing that you are the owner of entire right, title, and interest, procedures become simplified.

It is also questioned as to whether or not this $20 recording fee will in fact produce the revenue that it is intended to produce. I see little or no difference between an assignment and an exclusive license. It may lead to a practice of exclusive licensing as opposed to assignment of patents in an effort to avoid this particular fee.

In addition to that, we feel that the fee proposal of the bill is discriminatory in that it makes available only to the patentee the right to waive or defer the payment of maintenance fees until such times as he can prove that any one under the patent has made at least the amount of the maintenance fee. This prevents a corporation, and all governmental agencies, from taking advantage of this deferral in the event they have not commercialized the patented invention.

Moreover, even in the case of a patentee-owner, in the event there is a shop right in question, he may very well find it very difficult, if not impossible, to obtain from the owner of the shop right, under the patented invention, information as to whether or not any moneys in fact had been realized from the patented invention. This would make the filing of an affidavit by such a patentee-owner extremely difficult.

It has been amply brought out, I believe, before the subcommittee, the fact that the fees proposed by this bill will discourage the filing of patent applications. I believe evidence produced by the Commissioner himself indicates that in Germany the corporations own the majority of patents, not individuals. In the United States, if I can recall the figures, I believe the proportion is 70 to 30 percent.

In Germany I believe it is 85 percent to 15 percent.

In addition, let us forget for a moment corporations, because there are rich and poor corporations as there are rich and poor individuals. I know in particular, Senator Kefauver, that you are very interested in preventing anything that might tend toward a concentration of patents. What, then, would better lead to a concentration of patents but by putting a dollar sign on whether or not you can obtain and maintain patents? Will this help the inventor of limited means, whether he is a corporation or an individual?

In short, the patentee-owner, faced at the end of the first year with trying to realize something from his patent, after having paid a minimum of $130 or $140 in governmental fees, is now placed in the economic position where he must go peddle something that might have very little value. You can see the economic duresses and forces that can be used by virtue of maintenance fees.

To the large corporation, there is no doubt that maintenance fees will be an allowable expense for income tax purposes. I believe counsel is to examine this point, as to the allowability of such expenses as tax deductions by the individual. It, here again, is a facet of the bill that I think this subcommittee should look into very carefully.

Will it tend to concentrate patent holdings, and is such a concentration beneficial to the patent system as a whole.

It has also been pointed out, and I will make just a brief point on this, that if we are to weigh income derived from patents, we must not only consider the income taxes that are collected on royalties paid to the licensor, but the other taxes that are generated in the industries, in the businesses, that have been formed or based on patents.

There is no one in the patent bar that doesn't recognize the problems that are facing our patent offices—and we know of the work and effort that is being done by everybody concerned to try to alleviate those hardships. However, we question whether a fee bill of this type is, in fact, the way to overcome those hardships.

It has been examined already—that if these maintenance taxes go into effect, they will be in some sense discriminatory, because some people will pay them in whole, others in part.

In addition to that, to the extent it discourages the filing of patent applications and the issuance of patents, it will perhaps block entire industries from coming into being—another loss of revenue to the Government.

I think it also should be examined, since governmental agencies now are to pay these fees, are we merely moving dollars from one pocket to another pocket within the Government—because the Senator knows very well, from testimony before this and other committees, that many, many patents are now being taken out in the name of the Government.

In summary, we favor fee provisions tending to strengthen the patent system, but such provisions should not have the effect of allowing only the wealthy or the lucky to hang on to their patents. Changes in the patent law and procedure should be fully discussed as such, without fee complications and it should be recognized that many of the difficulties facing the Patent Office are internal matters, not likely to be corrected with a new fee schedule.

I would be very happy to answer any questions the committee might have.

Mr. DINKINS. Mr. Ohlson, I notice although you are a patent attorney for Republic Aviation Corp., that you appear here today representing the Aerospace Industries Association.

Mr. OHLSON. That is right, sir.

Mr. DINKINS. About how many companies constitute the membership of the Aerospace Industries Association? Just give me any kind of rough estimate.

Mr. OHLSON. About 85.

Mr. DINKINS. Now, is it a fact that most of those companies are engaged in cost plus fixed fee contracts with the Government today, in which they do research and development work?

Mr. OHLSON. I don't know whether we can classify them as cost plus fixed fee contracts, but I do know many of them are engaged in research and development contracts with the Government, yes.

Mr. DINKINS. Do you or do you not know whether a substantial amount of those contracts are cost plus fixed fee?

Mr. OHLSON. I do not know.

Mr. DINKINS. Isn't it true that a substantial number of those companies also do business with the Defense Department?

Mr. OHLSON. Oh, yes.

Mr. DINKINS. Mr. Ohlson, I take is you are familiar with the ASPR regulations. I want to read three lines from that regulation under patent cost.

Cost of preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosable, are allowable.

As I interpret this section, it means, that when you have a research and development contract with the Government and you have to report these disclosures, that your examination of the prior art and the preparation of these disclosure reports, and other comparable expenditures, are allowable deductions under the contract with the Government. Is that your understanding?

Mr. OHLSON. Yes, sir.

Mr. DINKINS. Well, now, isn't it a fact also that in a great majority of these research and development contracts with the Defense Department, that the Government only takes back a royalty free license, and that the contractors get the title to the patents?

Mr. OHLSON. That is true.

Mr. DINKINS. Well, now do you think in those cases in which the Government furnishes the money for the contractor to do the research work, and when the Government puts up the money to have their disclosure reports prepared, and the prior arts examined, and then turns over the title to the patent to the contractor, do you think that the revised fees that are called for in this present patent fee bill are inequitable to those manufacturers working on those Government contracts?

Mr. OHLSON. Not to those Government contractors—I don't think they are inequitable. This is the question I raised before. Is not the Government paying the contractor to, in turn, turn around and pay the Patent Office—is it not moving money from one pocket of the Government to another? And in that process, perhaps detracting from the value of that money, because of the hands it goes through and the necessary accounting procedures.

While we are on the subject of ASPR—and we refer now to other provisions in the ASPR—in the event the contractor does not file on the application, the Government has the right to file. I believe examination will show that the Government does file applications. In short, various agencies of the Defense Department file patent applications in the U.S. Patent Office on inventions on which the contractor does not file. This is the point I brought out, that those governmntal agencies will be faced with the same problems.

At the end of 5 years will any one of these agencies continue to pay the maintenance fee or not?

Mr. DINKINS. Well, I don't propose to argue the question with you, Mr. Ohlson. But it is a fact, isn't it, in the case of a contract with the Defense Department, that the contractor takes title in a very high percentage of cases—something like 90-odd percent of the cases?

Mr. OHLSON. This is true. And of course the reason, as has been argued before committees—in fact, this very committee—is that this is one of the incentives that is open to the defense contractor—that he has the incentive of perhaps obtaining out of this research and development a patentable invention, which he can commercialize. Of course, the income taxes from that would go into the Federal coffers.

In addition to that, he will now be in a commercial field, which means there is employment in other areas.

This is the whole story of the patent system. Give American industry an incentive through which it can handle and create new jobs, and make money, and it will do this—it will make new jobs, it will create revenue, and it will pay its taxes.

Mr. DINKINS. But you feel if this bill is passed as it has been presented, that it will stifle the incentive to those Government contractors that you speak of?

Mr. OHLSON. I can't speak of course for all the Government contractors.

Mr. DINKINS. I mean the members of your association who have Government contracts.

Mr. OHLSON. Let's not be confused.

While our membership consists a good deal of large defense contractors, by far, I would say, the membership comprises small businessmen—the men who make the sparkplugs, and the screws and nuts and bolts. These are not R. & D. defense contractors, these are the men who will feel the impact of this bill.

I think, as you well know, that some 45 to 50 percent of our defense contracting dollar—I am sorry—I may be wrong on the percentage, but speaking for my own company, about 40 percent of our defense contracting dollar goes to small business.

These are not research and development contractors, who obtain patents by virtue of research and development contracts.

I can tell you for a fact that these men and their companies have patented inventions and devices which they come to us to sell. And these, more perhaps than the larger corporations, are extremely conscious of the incentive of the patent system.

Senator KEFAUVER. Thank you very much, Mr. Ohlson, for being here and giving us your views.

Mr. OHLSON. Thank you.

(The full statement of Mr. Ohlson follows:)

STATEMENT OF FRANZ O. OHLSON, JR., AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA

Mr. Chairman and members of the subcommittee, your courtesy in permitting me to testify is sincerely appreciated.

My name is Franz Ohlson. I am patent attorney for Republic Aviation Corp., but appear today representing the Aerospace Industries Association.

Mr. James R. Wilkinson III of the Aerospace Industries Association staff is also here with me today.

The member companies of the Aerospace Industries Association have given consideration to the Patent Office fee bill, S. 2225 and H.R. 10966. Although the desire to increase revenues derived from the Patent Office operations are recognized and it is considered that efforts in this direction are proper, in considering this matter the member companies of this association are more concerned with the philosophy of the bill than with the exact dollar values recited therein. Therefore, the following general comments are submitted for your consideration:

(1) As an association, we do not object to a reasonable increase in Patent Office fees, but we believe the Patent Office should be treated similarly to other Government agencies. Thus, we would expect the revision of Patent Office fees to be part of an overall readjustment of Government fees. In this respect, we recommend that real thought be given the patent system's role in our economy and that its benefits to the public, as well as to inventors, be examined. The public has certainly benefited from Thomas Edison's invention of the electric light bulb, and the rewards to the Wright brothers were trivial as compared to society's gains for instance. Further, the ability of U.S. industry to pay high wages and

compete in world markets is more pronounced in those fields of endeavor where inventions play a prominent part. Thus, this country needs more invention, not less. Accordingly, fees should not be raised to the point that the filing of applications would be appreciably discouraged.

(2) The members of this association believe that the fees imposed by the Patent Office should be for the purpose of revenue and should not be slanted toward changing the patent law or procedure. Patent procedures and law, as in law generally, need reasonable continuity and stability to achieve their purposes, therefore any substantive changes should be based on the needs of the law or procedure and not on financial requirements. As an instance, one of the changes in law proposed by this bill, the automatic issuance of patents after allowance, tends to nullify the basis on which patents are granted. The patent system was founded on the premise that, in return for a disclosure of an invention or discovery, the Government would give the inventor a limited period of exclusiveness for his contribution.

Provisions of the fee bill tending to alter patent law or procedure are as follows:

The provisions of $10 for each independent claim in excess of one is intended to force the use of the independent-dependent claim form as commonly used in England. Such a change cannot help but lessen the protection to be obtained from a patent because the basic coverage is in the one independent claim. This claim form works satisfactorily in England because they have used it for a long time and England courts take a liberal view toward patents. If there is to be a change in this manner of patent claim drafting, it should be either evolutionary or, if statutory, there should be clear guidelines for the benefit of all persons interested in patent claims. This bill has no guidelines of any sort.

The printing costs to be added to the issue fee in the amount of $10 per printed page or fraction thereof will, at least in part, tend to force applicants to shorten their disclosures. Here also, U.S. practice differs from that of Europe and "sketchy" specifications such as are common in England do not meet favor in either the Patent Office or our courts. Further, from the standpoint of the public, it is believed that a full and complete disclosure of an invention is highly desirable and should not be forced out of existence by printing costs. Not only does this printing charge tend to force applicants to describe their inventions in less detail, but also the difficulty in calculating the fees in advance results in the issuance of the patent before payment of the final fee. This practice has disadvantages. In addition to the matter of taking control of his disclosure away from the applicant, the shortened time between allowance and issue may seriously interfere with foreign filing (after convention date) and the filing of continuation-in-part applications. Further, under the proposed practice, it will probably be impractical in many cases to review the case before issuance for making corrections, checking coverage, etc.

The Patent Office alleges that the automatic issuance will result in earlier issuance of patents but this is questioned; there certainly must be better ways of expediting prosecution. At the present time, most of the delay between filing and issuance is by the Patent Office itself, not by the applicant. Further, if this practice be adopted, an applicant to protect himself against inadvertent publication of his disclosure may be forced to maintain one or more unduly broad claims in his case until he is ready to permit issuance and this practice would not be helpful to the Office.

(3) The fee structure of the Patent Office has remained essentially unchanged for nearly 30 years and may well need correction. However, having gone so long without change, it is believed improper to make drastic changes at one time. Rather, it is believed preferable to make moderate changes now; operate under the changed schedule for a reasonable interval of time, and then make such further changes as appear proper.

(4) Fees charged by the Government should be nondiscriminatory as between corporations and individuals as a matter of good law unless there is a justifiable reason for a difference. The present fee bill fails in this respect and tends to be an antibusiness measure. There has never been a time when we have had a greater need for our people to respect the fairness and wisdom of our law. On this point, at least some lawyers believe this proposed law to be discriminatory and based on political factors rather than fairness.

The discrimination between corporation and individual applications in the matter of fees is found in at least two provisions. First, the fee for registering assignments has been increased appreciably (from $3 to $20) with the only basis for such an increase being the alleged value of assigned cases relative to

nonassigned ones. Since assignments represent the normal way for corporations to assert ownership over the applications they file, this represents and additional fee for such applications and, to the extent the price cannot be justified by costs, it is discriminatory. As to the value of assigned cases, it is rare that any value can actually be foretold at time of filing; assignment is merely a prerequisite to filing, not an assertion of quality or value. Should this provision be relied on for substantial revenue, it might prove illusory for it may be possible to work out exclusive license provisions or some other means of transferring control of applications and patents not subject to the fee.

The second point of discrimination is in the deferral of renewal taxes permitted for the individual patentee owner but not available to corporation owners. In addition to being discriminatory, this provision raises practical problems. For instance, in the case of joint owners, a multitude of problems arise due to the fact that one of the joint owners may license or assign his interest without the consent of the other owner. Further, in the event of shop rights, it is entirely possible that the inventor will not know firsthand whether or not there have been any benefits from this patent and the shop-right owner may not be willing to tell him. In that case, how will the patentee owner be able to make a satisfactory affidavit as to the lack of "benefits" from the patent?

(5) The philosophy of renewal taxes is objectionable because such taxes put undue emphasis on timeliness of invention and tend to penalize both the poor and the rich and reward only the recordkeepers and tax collector. Further, such renewal taxes seem to be a tax on personal property levied by the Federal Government and thus of questionable propriety. Note that title 35, section 261 U.S.C. states "Subject to the provisions of this title, patents shall have the attributes of personal property." As matters now stand, the Government, by way of income taxes, takes the major portion of the reward from a successful invention. By the proposed renewal taxes, it expects to tax hopeful expectations as well as to provide a further tax on actual success.

Renewal taxes are common throughout the world with the exception of United States and Canada, and Canada has given some consideration to such form of fees. However, foreign countries differ from this in other respects and we are not about to follow their lead. For instance, in England, court fees are very much higher than here; yet no one is presently suggesting that our courts recover their full costs. Since renewal taxes are not collected on all patents, they must be quite high to raise any appreciable amount of income. Note that the total of the renewal taxes provided by this bill are $600 or 10 times the total of all Government fees now collected. This great increase is in addition to basic fees higher than the present fees. In other words, the proponents of this bill do not expect a very high percentage of patents to pay such taxes so that this provision becomes, in addition to raising some revenue, a way of shortening the life of patents. There is already a great disparity in the life of a patent as compared to the protection afforded other intellectual property such as copyrights. At the same time the copyright people are attempting to increase the life of copyrights to 76 years, the proponents of this bill are seeking to limit the life of most patents to corporations to 5 years and to those for individuals to 13 years.

In both England and Germany, a survey has indicated that about 85 percent of the patents issued there are to corporations and 15 percent to individuals. In this country, approximately 30 percent of the patents issued are to individuals, thus suggesting that the higher fees in England and Germany do have a tendency to discourage individual invention. In addition, this bill attempts to bring in a money-raising feature of foreign practice without introducing the features of foreign patent law that makes it easier for the patent holder to realize income from his patent. In Germany, for instance, not only do the courts more frequently uphold patents than here, but also the German Government, as a matter of policy, requires contractors to make suitable royalty-paying arrangements with patentees before proceeding with work for that Government. This is completely the reverse of what our Government does: by assuming patent risks itself, the Government forces patent holders to go to the Court of Claims for relief where the Government or a Government supplier is an infringer. If we are to adopt the renewal tax schemes common in Europe, we should also take steps to require our Government and the courts to handle patents in a manner similar to European governments and thus give patentees a chance to collect revenue from their patents.

(6) Fees should not be looked to as the sole salvation of the Patent Office. Thus, along with the efforts to make the Office more self-supporting by increasing its revenue, it should also be given authority to control its costs. For instance,

if necessary to get reasonable printing charges, it should be permitted to contract the printing to private industry. Of course, it should be permitted to charge fees to Government agencies on the same basis as others and it should be credited with the subsidies it grants libraries, etc., by way of patent subscriptions. In other words, if the Patent Office is to be run as a business, it should have the right to control its costs by businesslike procedures.

In summary, we favor fee provisions tending to strengthen the patent system, but such provisions should not have the effect of permitting only the wealthy or the lucky to hang on to their patents. Changes in the patent law or procedure should be fully discussed as such without fee complications and it should be recognized that many of the difficulties facing the Patent Office are internal matters not likely to be corrected by a new fee schedule.

Senator KEFAUVER. Now I believe that is all of the witnesses that asked to be heard.

Mr. DINKINS. That is all of the witnesses, Mr. Chairman, but I have a number of letters that have been received by the subcommittee relating to this bill, and with your permission I would like to offer them for the record.

Senator KEFAUVER. They will all be made a part of the record.

(The letters referred to follow:)

AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.,
Detroit, Mich., August 30, 1962.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

HONORABLE SIR: We are informed that the hearing scheduled by the Subcommittee on Patents, Trademarks, and Copyrights for Tuesday, September 4, will be directed to Senate bill S. 2225, pertaining to Patent Office fees to the extent modified by the revised schedule set forth in House bill H.R. 10966 (Union Calendar No. 780).

The Patent Committee of the Automobile Manufacturers Association, Inc., which includes in its membership the manufacturers, both large and small, of well over 90 percent of all passenger automobiles, trucks, and buses produced in the United States desires to submit for the record the accompanying statement opposing the House bill H.R. 10966 which was filed with House Subcommittee No. 3 inasmuch as it applies with equal force to the Senate version of the House bill under consideration.

Respectfully submitted.

W. L. SCHERER,
Secretary, AMA Patent Committee.

STATEMENT OF THE PATENT COMMITTEE OF AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., RELATIVE TO THE PATENT OFFICE FEE BILL H.R. 10966

The Patent Committee of the Automobile Manufacturers Association, Inc., desires to record its disapproval of the proposed Patent Office fee bill known as H.R. 10966, filed March 28, 1962 by Representative Emanuel Celler.

The issuance of patents is based upon the constitutional provision for the promotion of progress in the useful arts. Any deterrent effect upon the filing of applications for the issuance of patents is contrary to the public good.

While one of the declared purposes of the legislation in question is to bring the income from fees more nearly into line with the expense of operation of the Patent Office, we anticipate that the ultimate effect of the proposed fee increase will be to discourage the disclosure of inventions to the public. Individual inventors and small corporations will be deterred from the filing of patent applications with a consequent reduction in the accumulation of public information and knowledge essential to the promotion of progress in the useful arts.

Our specific objections to H.R. 10966 are based principally upon three important considerations in the proposal:

1. the provision of the bill for maintenance fees;
2. the exorbitant charge for independent claims; and
3. the charge for printed pages of specification and drawing.

The proposed maintenance fees, while reduced from those specified in H.R. 7731, will materially delay the financial recovery to the Patent Office and also will create serious administrative problems in the Office, as well as in the offices

of attorneys. The Patent Office must wait for the full benefit of the increase from this source over the span of 13 years. Moreover, the added cost to the Patent Office of maintaining records of all issued patents which are subject to payment of maintenance fees, to record the current status of individual patents as well as to carry on the complex accounting procedures required by deferred payments and the like would seem to offset any substantial financial gain therefrom.

We believe that the maintenance fee provisions of the proposed bill also discriminate between individual and corporate owners of patents in permitting deferment of the payment of these fees for individuals only. In our opinion, this provision is wrong in principle and, because of the manner in which many patent rights are held, would not even achieve the intended result.

The proposal to charge a fee of $10 per claim over one, if the claim is of independent form, is a step which is diametrically opposed to the long established requirement that an applicant point out and distinctly claim his invention. We believe this provision to be detrimental to the public interest in that it defeats the purpose of the patent statutes by denying an applicant his right to define the full extent of his departure from the disclosures of the prior art thereby unduly restricting the scope of his application.

We find a similar defect in the proposal that the final fee be based upon a charge for each page of printed specification and each sheet of drawing. This provision would encourage a reduction in the extent of the disclosure by the patentee in order to reduce the cost of his patent. It, too, is detrimental to the public interest in that the completeness of the disclosure may be seriously affected and even insufficient to comply with the statutory requirement for clarity of definition.

We, therefore, conclude that these proposals of H.R. 10966 are not only ineffective to produce the desired increase in Patent Office income within a reasonable period of time, but would also impede the progress of the useful arts by discouraging the filing of patent applications with complete disclosures. For these reasons H.R. 10966 is, in our opinion, opposed to the public interest.

Although doubling of the present Patent Office fees would, to some extent, be detrimental to the public interest, such a proposal might be a reasonable compromise and be less likely to deter the filing of patent applications while making an effort to meet the increased costs of operation brought about by inflation. We recommend that serious consideration be given to this method of increasing Patent Office revenue as a means of avoiding the difficulties we foresee in the maintenance fees, penalties for independent claims and the charges for printed pages of specification and drawings contemplated by H.R. 10966.

PATENT, TRADEMARK AND COPYRIGHT LAW SECTION,
THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., September 7, 1962.

Re Statement on bills regarding Patent Office fees.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks and Copyrights,
Senate Committee on the Judiciary, Washington, D.C.

DEAR SENATOR MCCLELLAN: Further in the above matter and following our letter of August 31, we are enclosing herewith for the record of the hearings held on September 4, our section's official statement incorporated in a statement relative to the Patent Office fee bill.

The board of directors of the bar association held a meeting and approved the statement today.

Respectfully submitted.

Very truly yours,

G. FRANKLIN ROTHWELL.

STATEMENT ON S. 2225 AND H.R. 10966, BILLS REGARDING PATENT OFFICE FEES, BY THE PATENT, TRADEMARK AND COPYRIGHT LAW SECTION OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

This statement sets forth the official position of the Patent, Trademark and Copyright Law Section of the Bar Association of the District of Columbia as formulated by the legislative committee and the officers and council of the section and as ratified by the board of directors of the association.

The Patent Copyright Law Section of the Bar Association of the District of Columbia is composed of over 200 members of the bar association who are particularly interested in and primarily practice the fields of law with which our section is concerned.

We recognize that the cost of operating the Patent Office has been steadily increasing over the years, while the fee structure which was established in 1932 has remained the same. We are in general agreement with the increase in the filing fee and the issue fee for patents, design patents, reissue patents, and trademark applications as proposed in S. 2225 and also favor the requirement that Government agencies be made to pay appropriate fees to the Patent Office when filing patent applications and issuing patents.

Since H.R. 10966 is presently pending before the House of Representatives and this subcommittee is considering the provisions set forth in H.R. 10966 together with those of S. 2225, we shall set forth our comments with respect to the provisions of both bills.

While we are sympathetic with the Patent Office position and the fact that its operating costs have increased, and accordingly believe that there is a need for an increase in the present fee schedule, we are opposed to those portions of H.R. 10966 and S. 2225 which would effect a substantive change in the present fee structure.

We wish to emphasize that we are not merely taking a negative position, but, in fact, either favor or have no objection to the majority of the fee changes proposed in S. 2225. However, we would like to comment on the portions of the proposed fee schedules which we oppose, and these comments with respect to the particular sections of title 35, United States Code, are as follows.

1. 35 U.S.C. 41(a)(1) (Discrimination against independent claims—H.R. 10966)

We are opposed to the proposed charge of $10 for each independent claim in excess of one submitted in the original application. While it is realized that an ideal manner of prosecuting patents would be to have one main, independent claim and then several claims depending therefrom, defining further limitations to the broad claim, there are many situations where the filing of independent claims is preferred over the filing of a series of dependent claims. A patent lawyer should be the final judge of the type of claims which would afford most protection to the applicant. In almost every instance, a patent lawyer conscientiously seeking to obtain patent protection for his client prepares the application and claims in the light of his being able to enforce the claims in the event of possible infringement litigation in the future. The Patent Office should not be placed in the position of telling the patent lawyer how to prepare the claims and penalizing by excessive fees the applicant who follows the advice of his lawyer. While it is realized that the job of the Patent Office would be simplified if all claims except the first one were written in dependent form, it must also be realized that the purpose of the Patent Office is to pass upon the issue of patentability of a disclosed invention. If it is a burden for the Office to examine more than one independent claim, the Commissioner has authority to promulgate a rule requiring that the applicant's attorney summarize each independent claim and distinguish it from every other claim in the case so as to facilitate examination by the Office.

2. 35 U.S.C. 41(2) (Issue fee based on size of printed patent—H.R. 10966)

We oppose any changes which would amount to issue fees comprising a $40 final fee plus $10 for each page of the patent specification as printed and $2 for each sheet of drawing. The patent system works at its best when the applicant makes a full and complete disclosure of his invention to the public in return for an exclusive monopoly for a period of 17 years. Penalizing an applicant by charging him $10 per page of his patent and $2 per sheet of his drawing will hamper the basic purpose of the patent system and will, in turn, deprive the public of the disclosure of all facets of the invention, since patent lawyers and inventors will attempt to keep the cost of obtaining a patent at a minimum and thus will cut down on the length of the disclosure.

For example, at the present time an applicant may disclose two or three additional species of a particular apparatus by setting it forth in additional sheets of drawing and describing the function of the particular species in the specification. Since in mechanical cases one embodiment of the invention will support broad claims, then only one embodiment is likely to be disclosed so as to keep the cost of the patent at a minimum. There is always the possibility that other inventors, after viewing the patent with one embodiment, will file patent applica-

tions on the other embodiments which, if they had been included in the original patent, would have discouraged later applicants from filing. By penalizing an applicant for making a full disclosure in his application, not only will the public be deprived of all of the fruits of the invention, but the Patent Office will also be deprived of prior art which it could use against subsequently filed applications.

3. 35 U.S.C. 41(4) (reissue filing fees—H.R. 10966)

For the reasons given above regarding the fee of $10 for each independent claim in excess of one filed in the original application, we oppose this same fee with respect to reissue applications.

4. 35 U.S.C. 41(6) (discrimination against oral hearing by means of appeals fee—H.R. 10966)

We oppose the schedule of fees regarding appeals to the Board of Appeals from the decisions of the primary examiner in H.R. 10966. We feel that an appeal fee of $100 is excessive. The refunding of $50, if an oral hearing is not had, or the refunding of $75, if the appeal is withdrawn, means more bookkeeping problems for the Patent Office and the need for a larger staff to handle the paperwork. We are in favor of the $50 appeal fee as provided for in S. 2225, since the actual amount of revenue which will be collected by charging everyone $50 will very likely average out to be the same as under H.R. 10966, once the cost of the additional bookkeeping and recordkeeping required by the latter is deducted. It appears the fee schedule of H.R. 10966 is only an attempt to discourage oral hearings and will not bring in substantially greater revenue to the Patent Office.

5. 35 U.S.C. 41 (10) (sevenfold increase in assignment fee—H.R. 10966)

We are opposed to the provision of H.R. 10966 which provides for a $20 fee for recording each assignment and other papers. While it may be that the $3 fee presently paid can be reasonably increased, the fee of $20 is believed to be excessive. The Patent Office wants to relate fees to the cost of services, but has not shown nor argued that it costs the Patent Office anywhere near $20 to record an assignment.

6. Trademark fees

The proposed changes in the trademark fees in the House and Senate bills are substantially the same with the exception of the $20 recordation fee in the former, and we approve the proposal set forth in the Senate bill wherein the recordation fees are more reasonable.

7. 35 U.S.C. 151 (new procedure for issue of patent—H.R. 10966)

H.R. 10966 has a complicated system of billing a patentee who has been granted a patent, and we are opposed to proposed section 151 of this bill. We believe that the final fee should merely be increased to $50, plus a charge of $2 for each claim in excess of 10, as proposed in S. 2225.

If the proposal set forth in the House bill becomes law, then the Patent Office will require a larger staff to maintain the records and bill the patentees regarding the cost of the patent (final fee, $40; $10 for each page of specification; $2 for each page of drawing), receive the moneys, and check the partial payment, and, eventually, the full payment of the fees.

As provided in H.R. 10966, the Commissioner, at the time of giving a notice of allowance, may require a sum, constituting a portion of the issue fee, to be paid within 3 months of the date. Nonpayment means that the application becomes abandoned. The remainder of the fee must be paid within 3 months after the date of the issuance of the patent, or else the patent lapses as of the date the issue fee was due.

In the first place, under the present system, an applicant is afforded ample opportunity after he receives the notice of allowance to decide whether or not to file divisional applications on unelected subject matter. Such decisions are almost invariably deferred to this time since, quite often, an applicant does not want to go to the expense of filing an unelected species until such time as he determines whether or not the elected species is patentable.

In addition, under present practice, one desiring to secure the priority of a foreign application under the International Convention would have to obtain the certified copy of the foreign application before it was determined whether or not the U.S. application would issue as a patent, which would put him to unnecessary expense in those cases in which no U.S. patent issues.

Still further, the present practice engaged in by some of deferring the filing of foreign application until such time as the notice of allowance is received in the

U.S. application would be eliminated and many applicants (i.e., those who do not wish to take advantage of the International Convention, but who still want to file abroad) would be forced, at the risk of loss of rights, to file abroad before it was determined whether or not the U.S. patent would issue. The above problem would exist, of course, even aside from the increased paperwork and the corresponding personnel burden which would be imposed on the Patent Office.

8. 35 U.S.C. 155 (maintenance fees)

We are opposed to any provision for maintenance fees under our patent system. If the investor or his assignee is deriving royalties from his patented invention, he will be paying more taxes on such royalties. The proposed fee bill would only mean an additional tax on the inventor or his assignee, payable at the end of the 5th, 9th, and 13th year.

If the purpose of the patent system is to stimulate inventions and reward inventors by giving them a monopoly for a limited period of time, the imposition of maintenance fees will have the effect of discouraging inventors from even attempting to obtain patent protection, thus depriving the public of useful inventions. The question most frequently asked by inventors is "How much will it cost me to obtain a patent?" It is submitted that the high fees for obtaining the patent and the maintenance fees required to keep the patent in force for the 17-year period will discourage the inventor from proceeding to obtain a patent.

While many corporations can afford the high fees, many other corporations and individuals cannot, and it is from the latter that significant contributions can be expected in the field of new inventions, which contributions may be reduced to a mere trickle by the heavy financial burden imposed.

We also object to the wording of proposed section 155(f) of H.R. 10966 and section 155(c) of S. 2225, wherein only the inventor (or his heirs) who owns the patent, may request deferment of the payment of the maintenance fee at the end of the 5th and 9th year. The language of this section should be amended to specifically include the filing of such deferment requests by the assignees, whether individuals or corporations. Otherwise, the provisions of the bill may be readily circumvented by assignees who merely obtain an option to buy the patent, which option is renewable annually upon the payment of a nominal sum. Title would reside in the inventor, who could make the necessary affidavit in support of the request for deferment of the fees, and the assignee need not take up the option until such time that the patent proved commercially worthwhile.

CALIFORNIA RESEARCH CORP.,
San Francisco, Calif., February 7, 1962.

Re S. 2225—Proposed legislation for renewal taxes and increased fees on patents.

Hon. JOHN L. MCCLELLAN,
U.S. Senate, Chairman, Subcommittee on Patents, Trademarks, and Copyrights of the Senate Judiciary Committee, Washington, D.C.

SIR: The above Senate bill proposes to raise patent fees to $90 and to add maintenance taxes of $900. Thus, the cost for Patent Office charges would be increased from the present $60 to $990—a change to 1,650 percent of the present patent fees.

This tremendous increase in costs, in my opinion, could only result in a depressing effect on the filing of patents. I am sure most large companies would cut down on their patent filings, and it would be particularly detrimental to small businesses and individual inventors. It seems to me that the stimulation of inventions and subsquent filing of patents which result in more business ventures is a much more fruitful source of tax income.

The early disclosure of ideas through patents, and the resultant freedom to publish in the technical literature after patents are applied for, promotes the progress of science. Early disclosure of ideas benefits the public as published ideas are used as a springboard to improved technology as well as to entirely new approaches. There are many examples of patents which have never been commercialized by the inventors but, through publication, other companies have become interested, bought the patent rights, and used the ideas in commercial ventures. Without publication, the tchnology would remain for all practical purposes a secret and never reach the commercial stage.

The large increase in costs proposed is said to be based on the desire to make the Patent Office self-supporting. However, to make inventors support the full costs of the Patent Office operations is contrary to the widely accepted principle that where the public shares the benefits, the public should share in the costs. Clearly, the public benefits from the patent system through the early disclosure of ideas.

We would have no objection to the raising of patent fees to $90 but we particularly object to the innovation of maintenance taxes on patents. Such taxes appear to be a new revenue-raising device without assurance that the fund generated would be used to support the Patent Office. The exemption provision, coupled to the proposed maintenance taxes, provides for deferring the taxes for a while if the patentee can prove he received no benefit from the patent. This exemption would be difficult and costly for both the Government and the patentee to administer on account of the complexities of keeping records, such as on patented inventions which are capable of being used as part of an apparatus or process. I believe the recordkeeping would be most burdensome to the individual inventor and the small companies, who would also then be most hurt by maintenance taxes. Hence, the merit in the so-called exemption is questionable.

In summary, we believe that raising patent costs to 1,650 percent of the present fees is unreasonable and contrary to the best interests of the general public. It would tend to discourage public disclosures of ideas and inventions and to cause a shift to technical developments on a trade secrets philosophy. We especially object to the proposed maintenance tax feature since it establishes the precedent of taxing patents. Such a tax would be difficult to administer if applied fairly, and present taxes on profits already reach to the beneficial use of patented inventions. Taxes on patents, if once enacted into law, would not be limited to the needs of the Patent Office. Such taxes would become merely another burden on potential inventors and would tend to discourage inventions.

Yours very truly,

A. L. LYMAN.

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., August 30, 1962.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: The national chamber urges your subcommittee to recommend a realistic schedule of fees which would enable the Patent Office to be self-supporting. S. 2225, now being considered by you, would substantially increase such fees, but would not provide sufficient revenue to recover all Patent Office costs.

The chamber believes that whenever practicable, the costs of Government programs, which provide special benefits to identifiable groups or individuals in excess of benefits to the general public, should be borne by those receiving the benefits.

The Patent Office does provide special benefits to inventors, applicants for patents, and holders of patents. We believe they should bear the cost of the patent system. For many years they did. The Patent Office was self-supporting over a large part of its existence. However, the fee structure instituted in 1932, and designed to maintain a balance between income and expenses at that time, has been woefully inadequate in the face of increases in operating costs since approximately 1940.

A table of income and operating costs of the Patent Office, submitted to the House Committee on the Judiciary on April 19, 1962, by the Commissioner of Patents, is a graphic portrayal of the inadequacy of the out-of-date fee structure. In the period 1900 to 1940, income from fees actually exceeded operating costs in 22 years, and in the same 41-year period only 5 years show income of less than 90 percent of costs.

Cost recovery has eroded rapidly since 1940; it has not again reached 90 percent. In a steady decline, it has dropped to 32 percent in 1961 and is estimated at 31 percent in the current year.

It is true that income from fees has increased 77 percent—$4.3 million in 1940 to $7.6 million in 1961. But operating costs in the same years increased 413 percent—$4.6 million in 1940 to $23.6 million in 1961. Substantial increases in

personnel costs (including eight general pay raises since 1945) and printing and reproduction costs have left fee collections far behind.

The chamber is of the firm opinion that under existing rates the general public is subsidizing the specific beneficiaries of the patent system. It strongly recommends enactment of legislation which would provide for recovery of the costs of the Patent Office by means of an equitable fee system.

We urge your favorable consideration of this letter. Also, I will appreciate it if you will include this in the record of hearings on S. 2225.

Sincerely yours,

THERON J. RICE,
Legislative Action General Manager.

CHICAGO, ILL., *July 26, 1962.*

Hon. EVERETT M. DIRKSEN,
U.S. Senate,
Washington, D.C.:

Based on my experience since 1927 as an engineer, I am very much opposed to H.R. 10966 because it will do a great harm to engineering incentiveness. I am hoping that you will not only vote against this bill but will use your influence with all of your colleagues.

C. P. CLARE, *Arlington Heights, Ill.*

JACKSON & PERKINS CO.,
Newark, N.Y., June 26, 1962.

Subject: Celler bill, H.R. 10966; and McClellan bill, S. 2225.

Senator KENNETH B. KEATING,
Senate Office Building,
Washington, D.C.

DEAR KEN: The above proposed legislation has been brought to my attention and I am profoundly concerned about this legislation for several reasons. This bill proposes a new concept of patent fees based upon very heavy charges called maintenance fees. Obviously these are not maintenance fees at all but are a revenue measure which are entirely contrary to the purposes and principles for which our patent laws were devised. In our particular situation they would impose a very heavy, unreasonable, and unbearable burden upon us and we would be forced to curtail our research expenses.

At the present time we have 349 active plant patents. In many cases these patents are active in connection with further plant research but in themselves are no longer in commercial production, and as a consequent no direct income is derived therefrom. Our research expenditures however are a continuing proposition and in striving for new improved plant varieties, we many times utilize these varieties in our hybridizing program, and if these are automatically lapsed, we would lose the protection of our own research development accumulated over the years.

As an example of the burden that this legislation would create, I am listing hereunder the present cost of our application and issue fees applicable to our 349 active patents and the increase in cost due to the increase of these fees and to the proposed so-called maintenance fees:

	Number	Present		Proposed		Increase
Applications	349	$30	$10,470	$40	$13,960	$3,490
Issue fee	349	30	10,470	40	13,960	3,490
Total			20,940		27,920	6,980

Proposed maintenance fees:

5th year, 349 at $100	$34,900
9th year, 349 at $200	69,800
13th year, 349 at $300	104,700
Total	209,400

The past 2½ business years have been extremely difficult ones in our business and with others generally in the same trade. We feel that such extra burdens as are proposed here in connection with the maintenance fees are all together unjust and most certainly would further retard our business and create further unemployment at a time when the national economy on all fronts seems to be wavering. We do not object to the 33½-percent increase in the filing and issuing fees since they are reasonable; however, we are strongly opposed to the maintenance fees both from the standpoint that they are unwise and ill conceived departures from patent policy, and that they are furthermore economically unsound.

I would sincerely appreciate your very best personal efforts in seeing that this legislation is defeated or so amended as to eliminate the maintenance fee feature of these bills.

Thanking you, I am,

Yours sincerely,

C. H. PERKINS, *President.*

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
September 6, 1962.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Copyrights, and Trademarks, Senate Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: S. 2225 provides that Government departments and agencies will now pay fees for patent applications and will also pay maintenance fees for each patent at the rate of $100 after 5 years; $300 after 9 years; and $500 after 13 years.

It is my understanding that the views of the departments and agencies affected by this measure were not solicited by the Bureau of the Budget prior to the introduction of the bill. There are indications that they would oppose patent fees.

Under present law, the Government may file without charge for patents for Government employees (35 U.S.C. 266). In addition, the Government has traditionally filed for Government-financed, contractor-derived inventions without charge. The Patent Office objected to this practice in 1953, but the Comptroller General ruled that the payment of fees by the Government in such instances is an economic waste. He stated that:

"The basic purpose of prescribing fees for services rendered by the Patent Office must be to reimburse the United States, at least in part, for the cost of such services. Obviously, such costs can be recovered, in reality, only by the collection of charges or fees from private individuals or interests, since payments by other Federal agencies constitute, in effect, merely a transfer of funds from one pocket to another, and do not result in the net recovery of any costs by the Government. In fact, payment and collection procedures would entail bookkeeping and other expenses which in the final analysis would involve an economic waste of Federal funds. This factor alone is persuasive in resolving the question."

Preliminary inquiries of several Government departments reveal that the effect of charging them a fee would discourage and inhibit filing of applications and maintenance of patents because of the additional administrative burden involved in processing payments to the Patent Office and the burden on the agencies' budget for this purpose. This could well undermine the ability of the Government to protect its own interest as well as the interests of the public. Provisions would also have to be made in contracts with private contractors to insure that the Government would take over patents in the event the contractor did not arrange to pay maintenance fees, for, any nonpayment by the contractors would defeat the Government's interest in the patent, since the patent rights would expire if the maintenance fees were not paid.

It is the opinion of the Comptroller General that it is the statutory duty of the Patent Office to furnish services to the Government and that the annual appropriations by Congress provides funds to carry out this specific responsibility.

Since neither the Comptroller General nor any of the Federal departments and agencies which would be directly affected by S. 2225 have had the opportunity to express their candid views on this important legislation, I earnestly hope that action on this bill will be postponed until next year.

I am attaching a letter from the Comptroller General of the United States to the Secretary of Commerce, dated July 13, 1953, which I respectfully request be placed in the public record with this letter.

Sincerely yours,

RUSSELL B. LONG,
Chairman, Subcommittee on Monopoly.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 13, 1953.

The Honorable the SECRETARY OF COMMERCE.

MY DEAR MR. SECRETARY: Reference is made to your letter of May 13, 1953, requesting reconsideration of decision of this Office dated March 11, 1953, B-111648 (32 Comp. Gen. 392), wherein it was held generally that none of the statutes prescribing schedules of patent fees require expressly or by necessary implication the collection of fees from other agencies of the Government. As support for this conclusion reference was made to the canon of statutory interpretation that the sovereign is not affected by statutory provisions unless expressly named therein or included by necessary implication.

It is urged in your letter that the cited rule of statutory interpretation should not be applied to the instant situation since the statute explicitly provides for fees, making no exceptions thereto; that "where the language of the statute is clear and unambiguous, it must be held to mean what it clearly expresses;" and that the specific exemption of the Tennessee Valley Authority from the payment of fees for copies of documents furnished by the Patent Office, under the maxim "Expressio unius est exclusio alterius," must logically mean that the fees are applicable to all other Government agencies.

It is further urged that to hold that such agencies may avail themselves of the general provisions of the statutes providing for the supplying of services and documents by the Patent Office but are not bound by the provisions requiring payment would contravene the principle that where the sovereign claims the benefits of a statute, it is bound by the incidental conditions attached thereto, including the payment of costs for such services. Also, it is stated that the trademark statute (15 U.S.C. 1051–1127) is on a par with the patent statute so far as concerns the payment of fees; that no exception is stated therein in favor of the Government or any Government agency, other than the Federal Trade Commission, to the payment of fees for all services rendered and the Government departments and agencies customarily pay the required fees when they have occasion to take recourse in the Patent Office to the trademark statute. As further bearing on the matter of statutory construction, you direct attention to various other statutes authorizing or prescribing the collection of fees for services rendered by certain Government agencies which specifically except the Government from the payment of such fees, contending that if the canon of statutory construction that the sovereign is not affected by statutory provisions unless expressly named therein or included by necessary implication, were applicable, there would be no reason for specifically excepting the Government. Also, it is argued that the presence of exceptions in favor of the Government in some fee statutes would indicate that Government agencies are not excepted from statutes not so providing. Finally, in view of doubt as to whether the decision of March 11 ruled on the propriety of payment of patent fees other than those specifically questioned by the Department of the Army, it is requested that the scope of the ruling be clarified.

The canon of construction cited in the decision of March 11, as well as those urged for consideration in your letter, is merely an aid in arriving at the meaning of the statute. It is the legislative intent which must control; and, in arriving at the legislative intent, the entire statute, its forms, its several parts, its purpose, its relation to other statutes, and the effect of construing it one way or another, must be considered.

The basic purpose of prescribing fees for services rendered by the Patent Office must be to reimburse the United States, at least in part, for the cost of such services. Obviously, such costs can be recovered, in reality, only by the collection of charges or fees from private individuals or interests, since payments by other Federal agencies constitute, in effect, merely a transfer of funds from one pocket to another, and do not result in the net recovery of any costs by the Government. In fact, payment and collection procedures would entail bookkeeping and other expenses which in the final analysis would involve an economic waste of Federal funds. This factor alone is persuasive in resolving the question.

Such is the underlying philosophy of the act of December 19, 1942 (56 Stat. 1067, 5 U.S.C. 606), and of the other statutes referred to in your letter, which, while authorizing or prescribing the assessment of fees for services rendered, specifically except other branches of the Government from the payment of such fees. The presence in certain statutes of an exception in favor of the Government as to the payment of fees does not necessarily imply that fees are to be collected from Government agencies under statutes containing no such specific exception. It is an element to be considered, but it may only signify that the Congress in those instances was consciously aware of the matter and decided to emphasize the exclusion of the Government from the payment of fees. On the same theory, I cannot agree that because some provisions of the patent laws may apply to the Government without express inclusion all sections to which no such exception is specified apply with equal force. The very statute which you present in support of that view—the section of the Tennessee Valley Authority Act (55 Stat. 775) which specifically excepts the Authority from the payment of Patent Office fees for the furnishing of copies of documents, section 19 of the act of May 18, 1933 (48 Stat. 58, 68; 16 U.S.C. 831r)—refutes the proposition. That section provides that "The Corporation, as an instrumentality and agency of the Government of the United States * * *," shall be furnished by the Commissioner of Patents with copies of documents on file in the Patent Office without payment of fees. Rather than indicating an intent that only the Tennessee Valley Authority should be excepted from the payment of Patent Office fees, it appears that the statutory language was designed primarily to require that the Authority, as a Government corporation, should be accorded the same preferential treatment and exemption from the payment of fees as any other "instrumentality and agency of the Government." House Report No. 48, 73d Congress, explains this section as "merely a declaration that the Authority is the agent of the United States in carrying out its constitutional powers." Likewise, with respect to the specific exemption of the Federal Trade Commission (15 U.S.C. 1064) from the payment of the fee prescribed in the trademark statute upon application for cancellation of a registered mark, a review of the congressional hearings in the matter establishes that the involved bill, as originally proposed, was amended to include the cited provision for the purpose of conferring on the Government, in general, the same right to apply for cancellation of a registered mark as that accorded to private invididuals and firms. Also, it appears that the Federal Trade Commission was specifically mentioned merely because it is the agency, acting on behalf of the Government, most likely to be concerned and involved in matters of this nature. See the Congressional Record of June 28, 1946, page 7890, wherein, in explanation of this provision of the bill, it is stated by Senator O'Mahoney that—

"The intent of Congress to protect the public from the abuse of trademarks and trade names was demonstrated by the adoption of an amendment permitting the Federal Trade Commission to apply to cancel a mark."

In conclusion, it is the statutory duty of the Patent Office to furnish services both to the Government and to the public in connection with the administration of the patent and trademark laws. The Congress annually provides funds to carry out these duties and responsibilities. Repeatedly, in its annual reports to the Congress, your Department has commented on the extent of the free services furnished by the Patent Office to other branches of the Government. In the hearings before the subcommittee of the Committee on Appropriations, House of Representatives, in support of the budget request of $12,200,000 for the Patent Office for the fiscal year 1953, it is stated on page 375 by the former Commissioner of Patents that "We are doing our utmost * * * to maintain at a level of minimum adequacy the patent and trademark services which the Office is charged with performing for other Government agencies and the public." Again, on page 377 of the "hearings," it is stated that "our budget has to support services valued at about three-fourths of $1 million a year for other Government departments, foreign governments, and public libraries * * *. That is quite a material item that we have to absorb in our budget." Again, on page 378, there is included a table showing the items or services furnished free of charge to other Government departments and the estimated revenue if fees were charged. Only a part of these services can be identified as covered by the specific exemption to the payment of patent fees where the applicant for a patent is an employee of the Government (35 U.S.C., 1946 ed., 45). Hence, I am inclined to view this situation as falling under the general rule that payment for services rendered by one agency of the Government for another is not

authorized where the services are required by law in carrying out the normal functions of the performing agency and for which appropriations are specifically provided. See 16 Comp. Gen. 333; 17 id. 728; 31 id. 14.

Accordingly, on the basis of the present record, since there is nothing in the legislative history of the statutes here involved or otherwise manifesting an intent to authorize or require that fees be collected from the United States or its agencies for services performed by the Patent Office, the decision of March 11, 1953, is affirmed. And, as to the scope of that decision, you are advised that the payment by other agencies of the Federal Government of any of the fees and charges prescribed by rule 21 of the Rules of Practice in Patent Cases is not authorized.

Sincerely yours,

E. L. FISHER,
Acting Comptroller General of the United States.

MILES LABORATORIES, INC.,
Elkhart, Ind., July 19, 1962.

Hon. JOHN L. MCCLELLAN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MCCLELLAN: We wish to express our opposition to the new Patent Office fee bill, H.R. 10966. In a number of respects this bill would defeat the intent of the patent system to benefit the public and further includes provisions which, under the guise of a change in fees, would drastically and improperly change both Patent Office practices and substantive patent law. A modest increase in fees which is in line with the cost-of-living increase, since the last increase in fees, is in order and a compromise bill effecting such an increase should be enacted.

The benefit of the patent system inures primarily to the public and its benefit to the inventor is only secondary. Like the Federal judiciary, the patent system was not intended to be supported by the fees collected from those using it in the first instance.

Referring more particularly to specific provisions of the bill, paragraphs 1 and 2 of section 1 discriminate particularly against inventors who have made more complex inventions. The increased filing fee provided by paragraph 1 is unnecessary as a deterrent to undo multiplicity of claims, since the present practice of the Patent Office in rejecting claims too great in number is effective for this purpose.

The $10 fee provided in paragraph 2 of section 1 for printing each page of specification encourages minimal and inadequate disclosures, contrary to the intent of the patent system which is to encourage full and comprehensive disclosure of the invention to the public in the specification. Both paragraphs 1 and 2 change substantive patent practices under the guise of a fee change.

The provision of paragraph 6 of section 1 penalizes applicants who present their views to the Board of Appeals in person. Any such provision which would reward an inventor for failing to appear at the hearing of his case or would deprive citizens of their day in court is reprehensible.

The provisions of paragraph 10 of section 1, and paragraph 12 of section 3 are discriminatory against corporations which frequently find it necessary to record assignments of hundreds of patent and trademark applications, patents and trademark registrations. The bill appears to effect a totally unwarranted tremendous percentagewise increase in the recordal fees for such assignments.

With respect to section 6, the imposition of taxes penalizing those inventors wishing to maintain patents alive more than 5 years is not only contrary to the intent of the patent law, but it also very substantially increases the cost of patents to inventors. This provision ignores the fact that patents are issued to inventors only in return for complete divulgation of their inventions to the public for the benefit of all.

Subparagraph (f) of section 6 raises legal and administrative problems totally unrelated to known substantive patent law and makes a patent's validity depend upon what the inventor, his assignee, or any licensee may have earned from the patent. This injects into patent litigation tremendous areas of conflict totally unrelated to questions of real merit and substance.

Very truly yours,

VINCENT J. ROMEO.

STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS ON S. 2225

This statement is made on behalf of the National Association of Manufacturers, a voluntary membership corporation with approximately 17,000 member companies, 83 percent of which are small businesses. Moreover, the association membership consists of representatives from every segment of American industry.

This bill, S. 2225, would make major revisions in the fees now charged by the Patent Office in the prosecution of patent and trademark applications. In addition, it provides for maintenance fees payable after a patent has been issued. Our principal interest in this bill arises because of the provisions contained therein for maintenance fees.

Generally, the association approves the objective of the Patent Office to realize substantially increased revenue to cover a greater portion of the cost of the work of the Office leading toward the issuance of the patent. The association has no objection to increasing the presently existing fees charged by the Patent Office to accomplish this end. We do not agree, however, with the proposal to realize a part of the projected increased revenue by the imposition of maintenance fees on issue. We are, therefore, opposed to S. 2225.

Our objection to maintenance fees is largely grounded on the fact that they would impose upon the U.S. patent system certain requirements detrimental to the desired objectives of the system, merely to obtain increased revenue. This does not seem desirable when the objective can be accomplished simply by increasing existing fees.

It should be kept in mind that the patent system was set up for the benefit of the public and not any class of individuals. The public benefits from the disclosures in all patents, and benefits mostly from the disclosures in patents on advance inventions which are not available commercially. Others may then utilize such information in additional work to make further or alternate inventions. This results in a continuing stream of more practicable devices for the benefit of the public. If these disclosures are not made, it follows that the public is the loser.

Maintenance fees not only will tend to discourage the filing of patent applications in general, but particularly, will discourage the filing of patent applications on inventions which result from advanced development and research and which are "ahead of their time." Patents will continue to be taken out on detailed designs of products which are being placed on the market since it will be known that the sales will justify paying the fees. In contrast with this, it will be hard to justify filing on inventions, the commercial future of which is unknown, if the threat of future payments is present.

There are other specific objections to maintenance fees which are quite serious. One is that they will greatly complicate matters from the point of view of the individual inventor. He will have to be careful to bring up in good time the maintenance fee due, and probably will be compelled to employ counsel to help make the hard decision as to whether to let his brainchild go by the board, or, to pay the required amount and hope to commercialize the invention further during the ensuing 5 years.

From the Patent Office standpoint, it is difficult to believe that the proposal will result in anything but a substantial increase in administrative costs which would cut down on any revenue realized from maintenance fees.

Another objection to maintenance fees is that there is considerable doubt as to how much revenue would be raised since it is difficult to determine how many patents would be maintained or how much the revenue would be 5, 10, or 13 years in the future.

The U.S. patent system has generally been recognized as the most successful in the world. The superiority of our system is illustrated in the high proportion of sales by U.S. companies in the last several years of new developed products—the majority of which are patented—and by the large degree to which industry abroad has taken up the innovations arising in this country. Bearing this in mind, an increase in presently existing fees charged by the Patent Office is a matter which we favor—if based on the structure presently existing.

For many years the patents committee of the NAM has strongly supported the efforts of the Patent Office in its worthy attempts to increase its overall efficiency and to reduce its work backlog. In making a recommendation for increases within the existing fee structure, we have devoted serious consideration to the problems of individual inventors as well as to applications and issuances involving companies and their employees. We are of the firm belief that an

increase would be fair and reasonable to all concerned. It is very unlikely that discoveries or inventions of any value will be lost to the public by the requirement of an increase in fees, which have not changed in 30 years. In summary, we believe the patents system of the United States stands to be best served by legislation based on fee increases within existing structures rather than attempting to institute a maintenance fee system.

THE NEW YORK PATENT LAW ASSOCIATION,
New York, N.Y., September 6, 1962.

Re S. 2225 and H.R. 10966.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights, Committee on the Judiciary, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: As we have previously indicated to you in reply to your letter of August 24, 1962, it was not possible for a witness to appear on behalf of the New York Patent Law Association before your subcommittee at the hearings on Tuesday, September 4. In lieu of a personal appearance, we submit the following comments which we hope will be helpful to you.

I might add that these comments in the main are similar to those which I submitted to Congressman Celler in commenting on H.R. 10966. I understand that in your hearings you will consider both the House version of the fee bill H.R. 10966 as well as the Senate version S. 2225. Accordingly, our present comments have been amplified to include appropriate comments on the differences between the two bills.

We are in accord with sections 1, 2, and 3 of H.R. 10966. The increased fees they provide appear to be justified generally by the need for additional revenues to offset the increased cost of Patent Office operations. There is merit, too, in their encouragement of succinctness and brevity in patent applications, their recognition of the differential fee principle in requiring higher fees for applications which are normally more demanding of Patent Office services, and their discouragement of filing appeals for the purpose of delay. In our view, H.R. 10966 is preferable to S. 2225 because the latter bill omits higher fees for appeals that are considered by the Board, fees for disclaimers, revival of abandoned applications, extra fees for delayed payment of the final fee, and higher fees for recording assignments.

We are opposed to section 4 in its present form and are opposed to sections 6 and 8, for these reasons:

Section 4

By the proposed amendment of U.S.C. 35, section 151, the Commissioner is required to issue the patent at some indefinite time after the notice of allowance, regardless of whether the final fee is paid. This would have the effect of taking away from the applicant his present right to abandon the application after its allowance and thus rely on protection through continued secrecy of the invention rather than through the patent, a choice which is important to his best interests in some instances, as when pertinent prior art is first brought to his attention after allowance of the application but before the patent would normally issue. It would also seriously impair his present right to file a "divisional" or a "continuation" application after allowance of the "parent" application, in order to present new claims or an improved disclosure in the light of newly acquired information. It would adversely affect the applicant's present right to await the final outcome of examination of his application in the U.S. Patent Office before incurring the expenses of filing corresponding patent applications in foreign countries; since issuance of the patent would automatically cut off the prosecution of it in the Patent Office and foreclose the applicant from the further steps in the prosecution, between notice of allowance and payment of final fee, which are now enjoyed. Finally, it would tend to delay the prosecution of patent applications by encouraging applicants to retain unduly broad or informal claims in the case for the very purpose of preventing a premature and untimely issuance of the patent.

We believe that the provisions of section 4 have no proper place in the present bill which is directed to Patent Office fees. Section 4 deals with substantive rights of the applicant and should be considered separately as to whether there is any real need for it and whether any possible advantages are offset by disadvantages.

Sections 6 and 8

In our view, any benefits to be derived from the proposed maintenance fees are outweighed by their adverse effects and, moreover, are illusory.

The net amount of additional revenue they would provide to the Patent Office is speculative, particularly in view of the uncertainty as to the number of patents which would be allowed to lapse for nonpyament of maintenance fees. Whatever this additional amount might be, it may in time be offset or more than offset by loss of revenue to the Internal Revenue Department as a result of premature lapsing of patents under the maintenance fee provisions. For example, many small or struggling corporations develop patentable products which they cannot produce or sell immediately. The development may come in the middle of a recession or at a time when the corporation itself is short of capital; or the product may be ahead of its time. Whatever the cause, the product is apt to be shelved. In these circumstances, there is a serious risk that the patent maintenance fee will not be paid. Then later on, when conditions are more favorable for promoting the invention, the corporation is unwilling to risk the necessary capital investment because its patent protection has been forfeited, with consequent loss of taxable income which the invention might have otherwise produced.

We also question the arguments by proponents of maintenance fees that elimination of "dead wood" patents will be effected through nonpayment of such fees. This elimination is not apt to occur in cases where the patent owner can easily pay these fees, unless the patented invention is proved conclusively to be valueless. Moreover, it is difficult to determine when a patent is of no value or is "dead wood." There have been many patents for inventions which did not attain commercial success until a decade or more after the patent grant. It is likely that the patent system would suffer more through forfeiture of patents of this type, due to incorrect predictions by patentees or their inability to pay the maintenance fees, than it would gain through elimination of patent rights which are truly "dead wood."

Section 155(c) of S. 2225 and section 155(f) of H.R. 10966 would permit an inventor or his heirs (but not assignees) to defer the first and second maintenance fees if the total benefit received by the inventor or any other party having any interest in the subject matter of the patent was less than the value of the amount of the fees. We have two strong objections to these provisions. In the first place, there is discrimination against small corporations and indigent assignees with respect to fee deferrals. In the second place, it will be too difficult in many instances to determine the amount of benefit received by the inventor so as to determine whether the fees may be deferred.

Other factors on which our view is based are the burdens involved to insure timely payment of maintenance fees by patentees and the risks of inadvertent nonpayment of these fees within the time allowed.

Taking into account all of these considerations, we are opposed to the principle of maintenance fees, and the more so because it appears that their primary purpose is to increase Patent Office revenue to some arbitrary percentage well over 50 percent of its budget. We believe this to be an unfair burden on patent owners, who after all represent only a small number of those benefiting from the facilities of the Patent Office. Industry, in general, benefits by having readily available a vast central store of well classified technical information on which to base further technical advances. The general public benefits from the progress in the useful arts which is brought about through the workings of the patent system. This, indeed, is the basic reason for the existence of the Patent Office.

We believe, therefore, that the revenue derived through Patent Office fees from applicants and patentees, to constitute their fair share of the Patent Offic budget, should be about 50 percent and certainly not more than 60 percent of that budget. If the fees proposed by sections 1–6 of H.R. 10966 will not produce such revenue, the necessary additional amount should be provided by increasing these fees, especially the fee for issuance of a patent, rather than by imposing patent maintenance fees.

Very truly yours,

CYRUS S. HAPGOOD, *President.*

OREGON PATENT LAW ASSOCIATION,
Portland, Oreg., July 30, 1962.

Re Patent Office fee bill, H.R. 10966.

Hon. MAURINE B. NEUBERGER,
Senator from Oregon,
Senate Office Building,
Washington, D.C.

MADAM: The Oregon Patent Law Association on July 16, 1962, passed a resolution recommending the tabling of H.R. 10966 for further study because of the drastic changes in the fee schedules proposed.

We hope that you will keep this matter in mind if by chance the House bill is passed and the subject matter thereof comes to the Senate for its review.

Very truly yours,

JOSEPH B. SPARKMAN, *Secretary-Treasurer.*

THE PATENT LAW ASSOCIATION OF PITTSBURGH,
May 23, 1962.

Hon. JOHN L. MCCLELLAN,
U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: I enclose a copy of a resolution adopted by the Patent Law Association of Pittsburgh at its annual meeting held on May 16, 1962, relating to H.R. 10966.

Respectfully,

JAMES K. EVERHART, JR., *Secretary.*

RESOLUTION

Resolved, That the Patent Law Association of Pittsburgh, while recognizing the principle that some Patent Office fees should be moderately increased and should be related in part to Patent Office expenses, is strongly opposed to increases in the several basic fees in excess of 100 percent, as provided for in H.R. 10966, and in particular is opposed to: (*a*) The institution of patent maintenance fees, as provided for in sections 6 and 8 of H.R. 10966; (*b*) the complicated determination of fees for issuance of patents, as well as the precipitous printing and issuance of patents without at least partial prior payment of a final fee, as provided for in sections 1 and 4 of H.R. 10966; and (*c*) the regulation of Patent Office practice through a fee bill. This resolution, adopted at the regular meeting of the association on May 16, 1962, shall be promptly communicated to the appropriate congressional committees, and to the Commissioner of Patents.

THE PHILADELPHIA PATENT LAW ASSOCIATION.
Philadelphia, Pa., August 27, 1962.

Re S. 2225 and H.R. 10966.

Hon. JOHN L. MCCLELLAN,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights, Senate Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR MCCLELLAN: On May 18, 1962, I sent you a letter reporting the opposition of our association to the Patent Office fee bill S. 2225 and particularly opposing the institution of maintenance fees on issued patents. Our board of governors has now instructed me to further advise you of its opposition to the provision of the Patent Office fee bill which provides for the payment of $10 for each independent claim in excess of one for the reasons briefly outlined below.

Particularly in complex mechanical and electrical cases, a substantial number of independent claims are essential in order to properly cover various different combinations which cannot be covered by using one independent claim and dependent claims. Thus the $10 fee for each independent claim over one represents a substantial penalty for claim situations which, under our patent laws, are absolutely necessary.

In the view of many patent lawyers, dependent claims are more vulnerable with respect to validity than independent claims covering the same subject matter.

This provision would make the fees with respect to certain patent applications excessively high even considering the increased labor involved on the part of the Patent Office. In discussing large applications in his statement before the House Committee on the Judiciary on April 19, 1962, the Commissioner of Patents referred to Patent Nos. 1,817,451 and 2,925,957. Under the new fee bill, the fees for prosecuting the applications from which these patents matured are estimated to be $11,910 and $7,834, respectively due to the large number of independent claims.

Very truly yours,

GEORGE J. HARDING, 3d, *President.*

THE PHILADELPHIA PATENT LAW ASSOCIATION,
May 18, 1962.

Re S. 2225.

Hon. JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary,
Senate Office Building, Washington, D.C.

SENATE COMMITTEE ON THE JUDICIARY,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights,
U.S. Senate, Washington, D.C.

GENTLEMEN: The members of the Philadelphia Patent Law Association have been polled in writing regarding the provisions of the Patent Office fee bill, S. 2225, with a large response having been made to the poll. The tally of the response shows a large majority vote for each point in the following resolution of our association of May 17, 1962.

"*Resolved*, That the Philadelphia Patent Law Association favors an increase in the fees charged by the Patent Office and specifically an increase in both the filing and final fees, but does not consider it desirable that the Office be placed in a completely self-supporting position and particularly strongly opposes the institution of maintenance fees on issued patents."

It is deemed appropriate to particularly emphasize to you that the aforesaid poll, both by a strong majority vote and by written comments, clearly showed that our association is very much opposed to the institution of maintenance fees on issued patents.

Very truly yours,

GEORGE J. HARDING 3d, *President.*

CHICAGO, ILL., *July 26, 1962.*

Hon. EVERETT M. DIRKSEN,
U.S. Senate,
Washington, D.C.:

Am very much opposed to H.R. 10966. Creativeness has made America great. Passage of this bill will stifle incentive to invent thereby choking the source of new and improved products and systems. We cannot do this. Vote against bill and urge colleagues to join you in effort to defeat.

M. E. PRICHARD.

STATEMENT BY LOUIS ROBERTSON, ARLINGTON HEIGHTS, ILL.

There seems to be a tendency to forget that the patent system exists "to encourage." Already the total costs to an inventor of partaking of this "encouragement" are so great that to my personal knowledge a substantial percentage of inventors are discouraged, especially those who are sensible enough to be well aware of the uncertainties encountered: The risk of forgotten prior art; the risk of harsh treatment by the Patent Office; and if this is survived, by the courts, and when if neither of these are harsh, the risk of a fatal defect in a patent even drawn by a good attorney. And of course, the risk surpassing all these, of failure on the market.

Even if only one inventor in a thousand would be discouraged, is that wise from the standpoint of the country's general welfare? And what percentage can we discourage before the Government loses out from a purely fiscal standpoint, by losing the taxes it would have collected on royalties, on the profits of a created industry, and on all the wages in and contributing to that industry?

Is there any reason why the Patent Office should be singled out for recovery of the high cost of its operation from fees? I say "singled out", because these fees are not proposed in accordance with any general principles stated by the Budget Bureau. The Budget Bureau does have a statement of general principles, but no one has attempted to show, certainly by any public presentation, that these general principles require any fee increase, much less a large one. Indeed, one of the general principles notes an exception where the public interest would be impaired. But aside from that there can be no doubt that at most only a part of the benefit going into each application goes to the inventor directly. The work of the patent examiner is so important on behalf of the public that public interest would clearly preclude letting the inventor get his patent, if he chose, as in France without the alleged benefit of an examination. It is true that that would weaken the presumption of validity, but it is not very strong in most courts anyway. Speaking for an inventor I would rather forego the presumption of validity, if the law also protected me, as it could, against invalidity on mere technicalities of failing to use the right words in a definition or claim of the invention. To a very large extent, the Patent Office transactions amount to the negotiation of a contract in which the inventor's interest is represented by the attorney whom he pays, and the public interest is represented by the examiner, and so there is no reason why the benefiting public should not pay the examiner. Likewise the inventor rarely is interested in having his patent printed. In Canada, the inventor files a copy (carbon) of his application and receives it back in his patent bound in an official jacket bearing the grant. Again, it is the public that desires printing.

On these facts, the general principles of the Budget Bureau could and probably should be satisfied with present Patent Office fees (or even no fees, though fees are desirable for other reasons).

Furthermore, the Patent Office is unique in a manner not contemplated by the Budget Bureau's statement of principles. It is probably the only Government agency in the country in which something of value is brought to the agency and donated to the public. Over and above making the invention for public enjoyment, the inventor furnishes an expensive disclosure of this invention, which the Government wants to have printed and disseminated for the public good. The Government pays the research, the manuscript, and typesetting costs on many other technical publications. If it followed the same practice on patents, even if it screened the original ideas and threw out nine-tenths of them, the thoroughly justifiable Government costs would be many times the present cost of the Patent Office.

One excuse for charging the inventor in complete disregard of the foregoing principles of fairness is that inventors, or their assignees, receive patents of great value. What is the source of this value? The source is not the Government. Many patents, perhaps the majority, on which the Government has done all that it does on any patent are valueless. The value depends on the invention, which is derived entirely from the inventor, and therefore in fairness is not a valid excuse for charging him large sums. Indeed, the inventor must pay an attorney to struggle diligently to keep the Patent Office from whittling away all of the value by refusing to allow broad claims.

The other excuse for disregarding the foregoing principles of fairness is that the inventor can pay $120 as easily as he once paid $60. Aside from the fact that the present bill goes many times beyond that, there are two fallacies.

(1) Maybe the $60 when set was too high, and we have no way of being sure, nor even adequate reason for assuming that there were not inventors discouraged by it then.

(2) Perhaps the risks in entering the patenting occupation have either so greatly increased or become so much better known that there is far more need for concern now than there was then over the danger of fee discouragement.

It is true that the fee discouragement is not very applicable to three-fourths of the patents, which are owned by corporations. But it is equally true that the benefit to the public in raising the fees for these patents is dubious or even less than zero. These fees will go into corporate cost figures. In a few instances they may be inadvertently absorbed, but in most instances they will have an equal part with all other costs influencing prices. Since this will involve successive markups by the manufacturer and all subsequent handlers, the public will end up paying far more in prices than it would have paid in supporting the proper governmental work of the Patent Office directly by taxes. This inevitable cost increase would add its increment to the inflationary tendencies in

our economy. There may be times when the cost of proper governmental functions should be collected from the immediate recipients, in spite of the foregoing economic theories. That is certainly true when we want to discourage wasteful use of a governmental function, a purpose served by the present Patent Office fees. It tends to be true also when the cost charged to the recipients would tend in the end to be paid by only a relatively narrow portion of the population who are the sole and ultimate beneficiaries. In the case of patents however, the whole ultimate public is fairly uniformly the beneficiary, and each member of the public will ultimately pay his share of Patent Office costs either directly in taxes, or indirectly, with markups, in prices.

Perhaps in the end it comes down to this: We can be sure that any substantial fee increase will add to the present high cost which undoubtedly handicaps the patent system as an incentive to some extent. We cannot be sure how much the effect of this added discouragement will be. In view of the importance of maximum incentive, in view of the foregoing discussions of fairness, and in view of the dubious gains to the taxpayer who is also a consumer, is it wise to take any such risk?

CHICAGO, ILL., *July 26, 1962.*

Hon. EVERETT M. DIRKSEN,
U.S. Senate,
Washington, D.C.:

Urge you vote against H.R. 10966. This bill will most certainly discourage incentive to invent and lack of creativeness will eventually dry up our American economy. Consider its serious impact on Americas future. Vote against and urge your colleagues to do likewise, please.

T. L. SIPP.

LOUISIANA, MO., *September 6, 1962.*

Hon. EDWARD V. LONG:

Confirming our previous talk with you regarding McClellan's Senate bill 2225 on increased patent fees before Senate Judiciary Committee, we do not object to moderate increase in original filing fee on patents but the proposed large maintenance fees due at intervals of 5, 10, and 13 years are exorbitant and not justified. They should be eliminated from bill. This should not be used as fund raising method. It would be large and unnecessary burden on agriculture which needs encouragement by improvements resulting from plant patents. Would appreciate your help.

EDWIN J. STARK.

CHICAGO, ILL., *July 26, 1962.*

Hon. EVERETT M. DIRKSEN,
U.S. Senate,
Washington, D.C.:

Am much opposed to H.R. 10966. Bill is dangerous to American economy as discourages incentive to create new products. Vote against and urge colleagues to do same.

J. R. STINE.

JULY 3, 1962.

Subject: S. 2225 (McClellan bill).

Hon. THOMAS H. KUCHEL,
U.S. Senate, Washington, D.C.

DEAR SENATOR KUCHEL: Believing you may have some desire for early reaction to proposed legislation, we write now concerning a bill on which early action is not expected. We, therefore, respectfully recommend a vote in favor of the Patent Office fee bill known as the McClellan bill, S. 2225, when it comes to floor of the Senate for consideration.

We are a small business depending entirely on the income from plant patents obtained on our own new developments in the horticultural field. We understand there is little or no controversy concerning the proposed increases in the filing fee and the issue fee provisions of the proposed bill. We believe them to be reasonable and justifiable. We, likewise, have no objection to the principle of maintenance fees proposed in the McClellan bill. We do feel they would be

more equitable and collectible if the schedule of fees did not contain an increase for the 13th year, with respect to plant patents which generally tend to decrease in value and income with age.

Sincerely yours,

SWIM & WEEKS,
H. C. SWIM.

UNITED INVENTORS AND SCIENTISTS OF AMERICA,
Los Angeles, Calif., August 30, 1962.

JOHN L. MCCLELLAN,
Chairman, Patents, Trademarks and Copyrights Subcommittee, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR SENATOR MCCLELLAN: Supplementing my letter of August 28, may I state emphatically that we are definitely against bill S. 2225. We believe this bill is monstrously unfair to the inventors. We believe it is unjust for the U.S. Government to take away the patents, inventions, and initiative from the creative-minded inventors by passing such a bill.

Enclosed you will find our statement, and I would like to have this reported as our stand against bill S. 2225.

Sincerely yours,

DAVID RESNICK, *President.*

UNITED INVENTORS AND SCIENTISTS OF AMERICA,
Los Angeles, Calif.

DEAR MR. REPRESENTATIVE: We offer the following recommendations as to patent laws and rulings:

1. We recommend that the following bills be enacted into law. They have been pigeonholed for a disgracefully long time, and action should be taken on them at once: H.R. 3744, 3745, Senator O'Mahoney; 4267, by Congressman Craig Hosmer; 5047, Congressman Emanuel Celler.

2. H.R. 7731 (of which S. 2225 is duplicate) should be defeated. If enacted into law, the inventor would be charged a $900 licensing fee, in addition to increased (exhorbitant) patent fee, and would provide no protection against infringement; and would force the American inventor to patent his ideas in foreign countries, because the cost of patent is less; time required for patent to be granted is much shorter; and protection against infringement is guaranteed. The cost of obtaining a patent in the United States is about $2,000, plus this added $900 (if 7731 passes). This is a most unjust fee and should not be required.

3. Patent protection should be the same as copyright protection, covering patent rights in all countries.

4. A Federal search department should be established. Cost for search should not exceed $25. This would bring millions of dollars into the Government, and would assure protection for the inventor.

5. A court of appeals (cited in bill 3744) with a judge in each large industrial center, would guarantee redress for inventor in case of infringement on patent or other patent violations. Infringement should constitute a Federal offense, punishable by law, on patent issued, or patent pending. It should also be a criminal offense for employees of the Patent Office to divulge contents of any patent application outside the Patent Office; copying of patent, or making use of it in any way whatever.

6. When a patent is refused: If the inventor has paid patent attorney full fee for applying for a patent, half of the fee paid should be refunded to the inventor. Attorneys should be required to make an official search before accepting money for patent application fee and be forced to refund 50 percent when patent refused.

7. Present rulings on applying for a patent in foreign countries (after patent has been applied for in this country) should be changed as current rulings are unjust and a hardship on inventor.

8. Patent Office and Commerce Department should be made into two separate departments. Each can operate to best and fullest capacity if operating as a separate and distinct department.

The above covers much-needed changes. We trust, Sir, you will work toward securing protection in our own country, from our own Government, for our inventors, so they will not be forced to apply in foreign countries. We believe you

realize the vital place inventions play in everyday living here and all over the world, and that you will aid in securing better protection for our inventors.

Sincerely,

DAVID RESNICK, *President.*

UNITED INVENTORS AND SCIENTISTS OF AMERICA,
Los Angeles, Calif.

DEAR INVENTOR: The United Inventors and Scientists of America is the only organization of its kind in this country, incorporated over 20 years ago, as a non-profit, tax-exempt organization. Our chief object is to help the inventor with his problems. We ask no commission, percentage, or royalty from our members for such services. Many inventors and manufacturers are most grateful for help given them, without charge. Our aim is to build the organization for the benefit of the inventor, the manufacturer, the consumer, and the people in general.

We have good patent attorneys, who conduct searches in Washington for our members at a very special and very reasonable fee. We have applications for registration of a claim to copyright. This copyright claim guarantee is good for 28 years protection of the copyright. We also have an inventors library for the use of our members. We contact manufacturers and distributors without charge to the inventor. We are constantly fighting for better patent laws against the raising of patent fees and infringements on patent rights.

National Inventors Week, July 25 to 31, was first proclaimed in 1950. It was our original idea. Inventors Week each year since has been celebrated all over the Nation. We are inviting all the junior inventors and scientists to join our organization, and we will help them with their problems and inventions. This service is free of charge. We have already established a junior chapter of the United Inventors and Scientists.

We attach report of our recent exhibit at Los Angeles City Hall, which drew an attendance of 11,310 persons, and we need more inventions for display on radio and TV programs and for exhibits in the near future.

Among our chief objectives are the following:

1. To obtain a uniform patent law similar to existing copyright law.
2. Open the door to a world market in the exchange of patents and inventions for the benefit of all people.
3. Organize the inventors and scientists in many countries.

For any information about our organization, please write to us at the above address. Membership dues are $12 per year. Join our organization. Help us build this organization for the benefit of inventors and scientists.

Sincerely,

DAVID RESNICK, *President.*

CHICAGO, ILL., *July 26, 1962.*

Hon. EVERETT M. DIRKSEN,
U.S. Senate, Washington, D.C.:

I am very much opposed to H.R. 10966 because I feel it will stifle creative work on the part of engineers. Please exert your effort to prevent the passing of this bill and prevail on your colleagues to do the same.

GEO. F. WEINREICH,
Route 1, Cary, Ill.

Senator KEFAUVER. I think if there are others who wish to write letters or submit statements for that purpose, we will hold the record open through Friday.

That concludes our hearing.

(Whereupon, at 6:30 p.m. the hearing was concluded.)

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